Volume I.

75209

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 19[illegible]

No. [illegible]534

STANDARD SANITARY MANUFACTURING COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

[illegible]

FILED FEBRUARY 18, 1913.

(73,064)

UNITED STATES OF AMERICA

v.

STANDARD SANITARY MANUFACTURING COMPANY AND OTHERS.

RECORD—VOLUME I.

TESTIMONY OF WITNESSES FOR THE PETITIONER.

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1

IN THE UNITED STATES CIRCUIT COURT, DISTRICT OF MARYLAND.

No. 17.

UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY AND OTHERS, 2
Defendants.

Decree Appointing Examiner, Oct. 22, 1910.

It appearing that the above entitled cause is at issue on the petition and the answers and replication heretofore filed, now, therefore, upon motion of counsel for the petitioner, and by consent of the parties,

IT IS ORDERED: That Lindsay C. Spencer of the City of Baltimore, be and he hereby is designated and appointed as special examiner to take and report to the Court the evidence adduced or offered by the petitioner and the defendants respectively, with full authority as such special examiner according to the rules and practice in such case made and provided: 3

That said examiner give notice by mail to counsel for the respective parties, of his appointment herein, and of the time and place when and where he will attend for the purpose of hearing such testimony as may be adduced; and that notice be given by the respective counsel or solicitors to the opposing counsel or solicitors, or parties, by mail or personally, of the time and place of the examination, for such reasonable time as the examiner may fix or order in each case. 4

That said examiner may, when necessary or convenient for the respective parties, continue said hearings from time to time, by order made and entered during any regularly appointed or noted hearing had thereunder:

That said examiner may, upon application of any of

the parties, hold such hearings, and receive testimony in behalf of any party, at such times and such places without the District of Maryland as he may designate and appoint, by giving special notice to the respective parties or their solicitors, or by order made and entered at any regularly appointed or noted hearing had hereunder; notice of such time and place of hearing also to be given by the respective counsel or solicitors to the opposing counsel or solicitors, or parties, as provided by this order:

That said examiner is hereby given authority to employ such stenographers as the parties may agree upon to assist in the taking of said testimony from time to time as may be necessary:

That all testimony adduced pursuant hereto may be taken in the usual manner, under oath; and when completed, be reported by said examiner, together with all and several the proceedings had before him, to this Court, and filed with the clerk thereof, in accordance with the rules and practice of this Court:

That the respective parties may from time to time agree as to the time and place of taking proof outside of the District of Maryland, and may, in case the examiner herein appointed is unable by reason of illness or other cause to attend at the time agreed upon, by such agreement select an examiner specially for such examination, whereupon such examiner so selected shall as to such proof and the taking and reporting thereof, have all the authority, powers and duties herein given generally to said Lindsay C. Spencer, examiner, and the said examiner, shall act as such examiner outside of said District of Maryland except where there is an agreement among the parties as in the cases provided in this paragraph.

By the Court:

JOHN C. ROSE,
Judge.

Dated this 22nd day of October, 1910.

We assent to the foregoing order.

W. L. MARBURY,
Of Counsel for Defts.

EDWIN P. GROSVENOR,
Spec. Ass't to Att'y Genl.

JOHN PHILIP HILL,
United States Attorney.

IN THE CIRCUIT COURT OF THE UNITED STATES 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

2 Evidence for the Petitioner, taken before me, Lindsay C. Spencer, Special Examiner by appointment of the Circuit Court for said District, under the 67th General Equity Rule, as amended, after due notice to the counsel for the respective parties, in the Federal Building in Pittsburg, Pennsylvania, on the thirty-first day of October, 1910, at 10:30 a. m., pursuant to notice duly given.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General, on behalf of the Petitioner.

3 HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Defendants.

EDWIN L. WAYMAN, a witness of competent age, produced on behalf of the petitioner, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Wayman, what is your business?

A. I am engaged in the sanitary enameled iron ware industry. 4

Q. How long have you been engaged in that business?

A. About four years.

Q. Where did you start?

THE WITNESS: In this business?

Mr. GROSVENOR: Yes.

A. With the Seamless Steel Bathtub Company, in Detroit Michigan.

1 Q. How long were you there?

A. Until about the middle of last year.

Q. Please state the date? A. 1909.

Q. What month? A. July, 1909.

Q. Then where did you go? A. I came to Pittsburg.

Q. In what capacity?

A. As Commissioner of the Sanitary Enameled Ware Association.

Q. What became of the company with which you were associated in Detroit?

A. The company is not operating, and the property is
2 simply lying there. The affairs of the company have never been settled up. It is inoperative, and I don't know what may become of it.

Q. Have you made a study of the sanitary enameled iron ware business?

A. Yes, I have, principally with reference to the distribution of the goods.

Q. You are familiar with the manufacturers engaged in that business? A. Yes.

Q. You are familiar with the conditions of the business?

A. Yes.

3 Q. That is to say, with respect to the sales of the business?

A. Yes, and somewhat in respect to the manufacturing.

Q. On page 9 of the petition of the Government are stated the names of the 16 corporation defendants; are all those defendants engaged in the manufacture and sale of sanitary enameled iron ware? A. Yes.

Q. Other than the names mentioned on that page, what manufacturers of sanitary enameled iron ware are there in the United States?

A. J. M. Kohler Sons Company, Sheboygan, Wisconsin; the Iron City Sanitary Manufacturing Company, Pittsburg;
4 the Blairsville Enameled Ware Company, Blairsville, Pennsylvania; the Clymer Manufacturing Company, Indiana, Pennsylvania; Louis Lipp Company, of Cincinnati, Ohio; Washington Iron Works, Los Angeles; Rundel Manufacturing Company, Milwaukee; the Jacob Vollrath Sons Company, Sheboygan, Wisconsin; the Jones Holloware Company of Baltimore, and I think there is a small concern in Columbus, Ohio; I don't know the name; there is a man connected with it, I think, by the name of Pheil.

Q. The names you have given, as far as you know, include the names of all manufacturers of sanitary enameled iron ware products throughout the United States? 1

A. To the best of my recollection, yes.

Q. Will you state what are the articles known in the trade as sanitary enameled iron ware?

A. Bathtubs, receptors, pools, infants' baths, lavatories, drinking fountains, roll rim sinks and combinations, that is by combinations I mean various combinations of drainboards and end pieces to make different styles of sinks, slop sinks, sink backs and ends, drain boards, wash sinks, sink and tray combinations, laundry trays, closet bowls, urinals, flat rim sinks, square and round corner kitchen sinks, half circle sinks, wash bowls, trap standards, grease traps, closet tanks—that covers the principal items in the business. 2

Q. That is of sanitary enameled iron ware? A. Yes, sir.

Q. Now, of the articles you have mentioned, which is the most important in the trade?

THE WITNESS: In what respect?

Q. I will put it this way: What is the total annual output in value of sanitary enameled iron ware in the United States? 3

A. Any figure I might give you would be strictly a guess. I would say approximately not more than $14,000,000.

MR. NOBLE: I object to the witness making guesses and move that the answer as to the guess be stricken from the record.

BY MR. GROSVENOR:

Q. You say you have made a study of this enameled iron ware business? A. Yes, sir. 4

Q. You are at present the ostensible licensor of these 16 manufacturers, the defendants, the corporation defendants in this case?

MR. NOBLE: I object to the question on the ground that the use of the word "ostensible" contains a suggestion of a conclusion alleged in the bill and not an inquiry as to any question of fact.

1 By Mr. Grosvenor:

Q. I will change the question: You are at present the licensor of these 16 manufacturers, the corporation defendants in this case? A. Yes, sir.

Q. As licensor you are familiar with the extent of their output? A. No.

Q. During the four years that you have been in this business you have become, as you say, familiar with the names of all the manufacturers engaged therein? A. Yes.

Q. You have had occasion, have you not, to ascertain the names of those manufacturers?

2 A. I don't know how to answer that question. Can you make what you mean any plainer?

Q. Yes, this is what I mean: You have had occasion to find out the names of all those engaged in the business; in other words, you have tried to find out all those who are engaged in the business for purposes of your own information?

A. Well, not all of them, no. I know those firms are in the business.

Q. You say your estimate is that the total output of sanitary enameled iron ware in the United States is about

3 $14,000,000?

Mr. Noble: Note the same objection which was raised before.

Mr. Grosvenor: Answer the question, please.

A. Approximately, yes.

Q. Of this total annual output which, in the trade, is the most important article?

The Witness: I don't understand that question.

Mr. Grosvenor: It seems to me it is a very simple one.

4 The Witness: Are you talking of classes of goods, or what?

Mr. Grosvenor: I asked you which article in the trade is the most important article?

A. The bathtub, with respect to size and value, I should say.

Q. Then, in value, the number of bathtubs sold in the United States aggregate more than the value of any of these other articles which you have specified? A. No.

Q. I am only trying to get at the facts, and you will save a lot of time by answering the questions as briefly as possible. Now, I want to know— 1

Mr. NOBLE: The witness did not understand that last question.

Mr. GROSVENOR: The witness is very intelligent.

Mr. NOBLE: It is evident that the witness did not understand the question, and if counsel has put a question which the witness did not understand, it seems to me the witness has a right to ask what is meant, and I object to any suggestion to the contrary. 2

Q. What did you say aggregates more in value than the bathtub—that is, the total output?

A. Well, I would say all the other articles combined would equal more in value than the bathtubs.

Q. But the bathtub itself aggregates more in value than any one of the others? A. Yes, as a class.

Q. That is what I wanted. Next to the bathtub, as a class, which in value aggregates more than any other article? Is it not lavatories? A. I should say, yes.

Q. "Lavatory" is the trade term for what ordinary people call wash bowls? A. Yes, or wash stands. 3

Q. That is the modern form of the wash bowl fixed to the wall, with the fixtures attached? A. Yes.

Q. The most important article is bathtubs, and the next you say is lavatories? A. Yes.

Q. By which we mean wash bowls? A. Yes.

Q. The next is kitchen sinks, is it not—that is, all kinds of sinks?

THE WITNESS: You mean all kinds of sinks?

Mr. GROSVENOR: Yes.

A. I should say, yes. 4

Q. After the kitchen sinks would you say slop sinks?

A. No, I couldn't say.

Q. Laundry trays? A. I couldn't say.

Q. Both of the last mentioned articles have an extensive sale throughout the United States, have they not?

A. More or less limited in comparison with the others. The first three we mentioned stand out more prominently

1 than the rest. As far as the others are concerned I couldn't say what proportion are manufactured or sold.

Q. When you became Commissioner of the Sanitary Enameled Ware Association, how many members of the association were there?

A. I cannot recall the exact number, but they were not all members whose names appear in that list there (indicating).

Q. When did the Sanitary Enameled Ware Association disband? A. June 1.

Q. That is June 1, 1910? A. 1910.

2 Q. Will you look at this list which I show you and state whether or not those firms were members of that association?

A. All with the exception of the Kerner Manufacturing Company of Pittsburg.

Mr. GROSVENOR: I offer, then, in evidence, as "Petitioner's Exhibit No. 1," the list of members and officers of the Sanitary Enameled Ware Association, which the witness has stated disbanded on June 1, 1910, as they stood as of that date.

Paper referred to was then marked and filed as
3 "Petitioner's Exhibit No. 1."

Q. Will you please look at this list and state which of the corporations named on this page entered into licensing arrangements with you on or about May, 1910?

A. The Barnes Manufacturing Company, the Colwell Lead Company, the Day-Ward Company, the Humphryes Manufacturing Company, the J. L. Mott Iron Works, McVay & Walker, McCrum-Howell Company, the National Sanitary Manufacturing Company, Standard Sanitary Manufacturing Company, Union Sanitary Manufacturing Company, United States Sanitary Manufacturing Company,
4 L. Wolff Manufacturing Company, A. Weiskittel & Sons, Wheeling Enameled Iron Company. The Kerner Manufacturing Company, whose name has been inserted on this list, has also executed a license agreement.

Q. Did you give the name of the Cahill Iron Works?

A. No.

Q. Did they enter into an arrangement with you?

A. Not at the time you mentioned.

Q. When? A. About June.

Q. June, 1910? 1

A. I think the execution of the license agreement was made July 6.

Q. Mr. Wayman, have you produced at this hearing the papers which you were subpœnaed to produce?

A. Most of them, all I had time to get together.

Q. Will you please let me have them?

A. Here they are, sir.

Q. The subpœna calls first for the originals of which copies are made exhibits, numbered 1, 2, 3, 4, 5, 6, 11 and 12 respectively, attached to the petition of the complainant. Have you produced these exhibits? A. Yes. 2

Q. I show you a resolution in handwriting, dated March 30, 1910, and ask you if you will state the circumstances under which that resolution was executed?

A. That is Exhibit 1 of the petition. This resolution was entered into at a meeting held at the Hotel Astor in New York City. The first paragraph was the result—

Mr. GROSVENOR: Strike that out. You are giving me your conclusions, now.

Mr. NOBLE: Don't strike anything out. I object to counsel instructing the witness. 3

Q. I will change the question: Will you state whether you were present at the meeting on March 30, 1910, at which this resolution was signed? A. Yes.

Q. Did you see these signatures attached to this resolution? A. I think so, yes.

Q. Where was the meeting?

A. The Hotel Astor, New York City.

Mr. GROSVENOR: I offer the resolution referred to as "Petitioner's Exhibit No. 2," and I will read it.

Paper referred to was then filed and marked "Petitioner's Exhibit No. 2." 4

Mr. GROSVENOR (reading): "March 30, 1910. Resolved, That the matter of license agreement and resale agreement be referred to a special committee of five (5); said committee to be elected at this meeting and to be known as the price and schedule committee, which committee shall be elected directly, should the motion to adopt this resolution prevail.

"This committee shall interview the various manufac-

turers, obtaining their consent as evidenced by their signatures to the above-mentioned agreements. And when the consent of 85 per cent. of the production is had, the agreements shall become binding and effective.

"The commissioner is authorized to levy a special assessment equal to the amount of one quarter's dues as now paid into the association. The proceeds of said special assessment to be used for the purpose of defraying the necessary expenses incurred in carrying into effect the object for which this convention was called.

"The undersigned agree to the above conditions and in so appending their signatures hereby agree to give their prompt cooperation to the matter in question.

"Witness their hands and seals of the parties hereto:

"The Cahill Iron Works,
Per F. H. Caldwell, Pres.,
Per E. L. Wayman."

Q. You signed his name? A. Yes.

Q. Were you duly authorized to do so?

A. I understood so, but he said not.

Q. He entered into a licensing arrangement with you?

A. Yes, sir.

Q. (Reading): "L. Wolff Manufacturing Company, Herman M. Hoelscher, Secy." Was he present? A. Yes.

Q. (Continuing): "The Day-Ward Company, per A. G. Ward, V. P."; was he present? A. Yes.

Q. (Continuing): "Blairsville Enameled Ware Company, F. D. Cody"; was he present?

A. Yes, it should be Cook.

Q. "A. Weiskittel & Son Company, Anton Weiskittel"; was he present? A. Yes.

Q. "United States Sanitary Manufacturing Company, C. F. Arrott; The McCrum-Howell Company, Howard T. Gates, Secretary; The J. L. Mott Iron Works, E. Hammann (subject to confirmation or revocation by our general manager, John Reid); The Barnes Manufacturing Company, T. R. Barnes, Secretary and General Manager; The Humphryes Manufacturing Company, A. I. Laing; Standard Sanitary Manufacturing Company, Frank J. Torrance, Vice-President." Was Mr. Torrance there? A. Yes.

Q. All these parties whose names appear here were present? A. Yes.

Q. (Continuing): "Union Sanitary Manufacturing Company, by C. E. Gates; Wheeling Enameled Iron Company, by J. E. Wright, President, per E. L. Wayman." You had his authorization to sign that for him? A. Yes. 1

Q. Whose handwriting is that (indicating on Petitioner's Exhibit No. 2)? A. That is mine.

Q. (Continuing): "Clymer Manufacturing Company, W. A. Guthrie, President." Now, I understand this Petitioner's Exhibit No. 2, which I have just offered in evidence, dated March 30, 1910, is of a later date than the exhibit attached to the petition and marked "No. 3"; am I right?

A. Yes. 2

Q. I show you what purports to be a memorandum of agreement, undated, and ask you if that is Exhibit 3 to the petition? A. Yes.

Q. Who drew up this memorandum of agreement?

A. I did.

Q. Did you consult with counsel regarding that? A. No.

Q. What time did you draw this up?

A. On the evening of March 2.

Q. Where did you draw it up? A. In Chicago.

Q. Whose was the first name attached to it?

A. The L. Wolff Manufacturing Company's name.

Q. (Reading): "Memorandum of agreement. We hereby agree to execute with E. L. Wayman of the city of Pittsburg, as licensor, on or before April 15th, 1910, a license agreement for the manufacture of sanitary enameled ware under the following United States Letters patent: 'Various patents covering pneumatic dredgers.' (To be enumerated in detail.)" Had you ascertained, when you drew up this agreement, what patents should be included in the agreement? 3

A. Three of them definitely, the three on which I had options.

Q. Were you considering the inclusion of other patents besides those three? A. Yes. 4

Q. Had you at that time secured an assignment of those patents? Answer Yes or No. A. No.

Q. (Reading): "and such additional patents as may come into his possession, upon the terms, conditions, etc., as hereinafter stated or provided for: 1. The license agreement to cover the following schedules of enameled ware: Schedule 1. Five year guaranteed baths. Schedule 2. Two

1 year guaranteed baths. Schedule 3. All other grades of baths. Schedule 4. Small ware, lavatories, etc., and R. R. sinks." What does "R. R." stand for? A. Roll rim.

Q. (Continuing): "Schedule 5. Flat rim sinks. Schedule 6. Competitive lavatories 552 to 562 inclusive, 565 and 535." How did you happen to be in Chicago at that time?

A. I called a meeting of several of the manufacturers to meet me in Chicago and discuss this proposition.

Q. Who were present at that meeting?

A. There was W. J. Kohler, John B. Murphy—

Q. Was Mr. Kohler in favor of the plan? A. No.

2 Mr. NOBLE: I move that the answer be stricken out, and I object to the question, as no plan has been described.

Q. Was Mr. Kohler in favor of the agreement which you drew up that night?

Mr. NOBLE: I object again. He cannot tell Mr. Kohler's state of mind, and furthermore he stated that the memorandum was not in existence at that time.

Q. Who else were there besides the men you mentioned?

3 A. A. H. Cline, Jr.,

Q. Who is he?

A. Secretary of the United States Sanitary Manufacturing Company.

Q. Of what city? A. Pittsburg.

Q. A defendant in this case? A. Yes, sir.

Q. Who else? A. Francis J. Torrance.

Q. What is he?

A. First vice-president of the Standard Sanitary Manufacturing Company.

Q. Of what city? A. Pittsburg.

4 Q. Who else? A. Mr. McCrum.

Q. Of what firm? A. McCrum-Howell Company.

Q. Of what city? A. New York.

Q. Who else? A. Howard T. Gates.

Q. What company? A. The same company.

Q. With offices in New York? A. Yes, sir.

Q. Any one else?

A. H. M. Hoelscher, Secretary L. Wolff Manufacturing Company, Chicago, Illinois.

Q. Did you draw up this memorandum of agreement before or after the meeting? A. After the meeting. 1

Q. Did you consider with these men the subject matter of this memorandum of agreement. A. Some of it.

Q. You discussed with them the subject of entering into a license arrangement? A. I did.

Q. Was Mr. Kohler in favor of entering into such an arrangement?

Mr. NOBLE: Note the same objection previously stated.

A. No. 2

Q. Did he state that he was opposed to it?

Mr. NOBLE: I object to the form of the question on the ground that it does not call on the witness to state what was said, but calls for a conclusion.

A. Yes.

Q. Did Mr. Murphy state whether or not he was opposed to it? A. Yes.

Q. Did he state that he was opposed to it?

A. Yes—may I correct that?

Mr. GROSVENOR: Just answer Yes or No. 3

THE WITNESS: May I correct my last answer?

Mr. GROSVENOR: Read him the question, please.

Stenographer then read the last question.

THE WITNESS: As I remember he did not express himself.

Q. Mr. Murphy is connected with what company?

A. The J. M. Kohler Sons Company.

Q. Of Sheboygan? A. Yes, the Chicago representative.

Q. Who is president of that company?

A. Mr. Kohler is the president.

Q. Did the other gentlemen whose names you have mentioned as being present at the meeting state whether or not they were in favor of that proposition? 4

Mr. NOBLE: Objected to on the ground that it is already in evidence that the proposition referred to by counsel was not then in existence, the paper not having been written, and also objected to as calling for a conclusion.

1 Mr. GROSVENOR: Read the question, please.

The stenographer then read the last question.

A. Yes.

Q. Did Mr. Torrance participate in the discussion?

A. Yes.

Q. Was he in favor of it? Now, answer right out, Mr. Wayman, you know he was.

Mr. NOBLE: I object to that statement, and I object to counsel trying to badger the witness.

Mr. GROSVENOR: This is a hostile witness.

2 Mr. NOBLE: Well, I object to the badgering of the witness by counsel for the Government.

Mr. GROSVENOR: Just read the question.

The stenographer then read the last question.

A. If satisfactory details could be worked out.

Q. (Reading): "2. The amount of royalty to be as follows: $5 per day per furnace in operation with a rebate of 90 per cent. beginning with the 1st month of the 2nd period and monthly thereafter, if the terms of the license have been complied with.

"3. For each violation of the price regulations of the 3 license agreement we agree to forfeit a sum equal to the amount of the shipment in question, and such other penalties as may be agreed on." After this discussion or conference in Chicago, at which these gentlemen, whose names you have given were present, you say you drew up this agreement? A. I did.

Q. Were these matters incorporated in these various paragraphs of the agreement considered at that conference?

A. No.

Mr. NOBLE: Just one moment. Read the question, please.

4 The stenographer then read the last question.

Q. Did you have any discussion at that meeting as to the schedules to be agreed upon?

A. Yes. Do you refer to the schedules in paragraph 1?

Mr. GROSVENOR: Yes.

THE WITNESS: Yes, we did.

Q. Take up paragraph 2. Was there any discussion as to the amount of royalty to be allowed? A. No.

Q. The rebate in paragraph 2 is stated to be 90 per cent.; is that the rebate that was finally agreed upon in June? A. No. 1

Q. Referring to the third paragraph which I have read, was there any discussion at the conference as to what penalties or forfeitures should be incorporated in the licensing arrangement for failure on the part of the parties to carry out the terms of the contracts? A. I don't remember.

Q. You cannot remember? A. No.

Q. Referring to this paragraph which I have just read, is that provision incorporated in the same language in the license agreement entered into in June? A. No. 2

Q. That paragraph was changed? A. Yes.

Q. (Reading): "The selling prices to the jobbers to be established through the licensor by a price committee appointed by the various manufacturers." Was there any discussion in regard to that? A. I cannot recall.

Q. You say there was or was not? A. I cannot recall.

Q. You have no recollection on the subject? A. No.

Q. The price committee was subsequently appointed as evidenced in Exhibit No. 1 which we have just put in evidence, is that correct? A. Yes.

Q. That was at the meeting of March 30? A. Yes.

Q. Which was subsequent to this memorandum of agreement? A. Yes. 3

Q. Were the parties that were present at this conference in Chicago present at the meeting of March 30?

A. Not all.

Q. Who were not?

A. All with the exception of Mr. Kohler and Mr Murphy.

Q. In other words, Mr. Torrance and Mr. Hoelscher and Mr. Cline were there? A. And Mr. McCrum was not there.

Q. In other words, Mr. Torrance, Mr. Hoelscher and Mr. Cline were present at both the Chicago meeting of March 2d, and New York meeting of March 30? A. Yes. 4

Q. Was Mr. McCrum present at the New York meeting?

A. No.

Q. Was Mr. Gates present at both meetings? A. Yes.

Q. Was this subject matter as to the selling prices to the jobbers to be established through the licensor by a price committee appointed by the various manufacturers discussed at the meeting in New York City of March 30?

A. Yes.

Q. You say you cannot recall whether the subject was discussed at Chicago? A. I cannot recall, no.

Q. (Reading): "5. The resale prices to the jobber, taking into consideration the rebate for observance of buying and selling regulations, shall be figured as follows: High grade goods, 25 per cent. above jobbers' cost. Competition goods, 16 2/3 per cent. above cost." What do you mean by the resale prices to the jobber?

A. The prices at which the manufacturers sold to the jobbers.

Q. No, you don't mean that, do you?

A. That refers to the jobbers' profit.

Q. That refers to the rate at which the jobber should resell the goods to the plumber? A. Yes.

Q. You were considering at the Chicago meeting the resale prices?

A. No, I was considering what the jobber was entitled to as profit.

Q. How could you consider that without discussing the resale price?

A. The question was what the jobber could afford to do business on and make a reasonable profit on.

Q. And your purpose was to arrive at such an arrangement where the jobber could make a reasonable profit?

A. Yes, a reasonable profit.

Q. (Reading): "6. The rebates to jobbers shall be as follows: 10 per cent. payable at end of period for strict observance of agreements, the details of the manner in which the rebates shall be made, to be determined." Was that paragraph of this memorandum or the subject referred to in that paragraph, referred to at the meeting? A. No.

Q. Was it discussed at the New York meeting? A. No.

Q. Did the licensing arrangement finally agree upon the 10 per cent. payable at end of period for strict observance of agreements? A. No.

Q. There was a discussion at this time as to what the rebate should be? A. No.

Q. Not by any one?

THE WITNESS: You mean at the Chicago meeting?

Q. Was there any discussion after this Chicago meeting at which the rebates to jobbers was considered?

THE WITNESS: No—previous to the New York meeting, do you mean? 1

Mr. GROSVENOR: I mean at any time after the Chicago conference?

A. Yes.

Q. I don't understand your answer. Did you say there was or was not discussion as to what these rebates to jobbers should be?

THE WITNESS: After this meeting?

Mr. GROSVENOR: Yes. 2

A. Yes.

Q. There was discussion? A. Yes.

Q. That is, the various men present at the Chicago meeting and the New York meeting discussed these matters? A. No.

Q. Who did?

A. The members of the Commission mentioned in the license agreement, and myself.

Q. And they were the price and schedule committee elected or appointed at the March 30 meeting? A. Yes.

Q. How were they appointed at the March 30 meeting? 3

Mr. NOBLE: Will you read that question?

The stenographer then read the last question.

A. By ballot.

Q. Who were the members of the price and schedule committee appointed at the March 30 meeting?

A. H. M. Hoelscher—do you want the firm names?

Mr. GROSVENOR: Yes, give the companies.

A. (Continuing): H. M. Hoelscher, representing L. Wolff Manufacturing Company, Chicago, Illinois; A. H. Cline, Jr., Secretary United States Sanitary Manufacturing Company. 4

Q. Of what place?

A. Pittsburg. T. R. Barnes, Secretary and General Manager of the Barnes Manufacturing Company of Mansfield, Ohio; Francis J. Torrance, First Vice-President of the Standard Sanitary Manufacturing Company, Pittsburg, Pennsylvania; Howard T. Gates, Secretary McCrum-Howell Company, New York.

1 Q. Who was entitled to vote on this balloting?

A. All present.

Q. Each manufacturer present had one vote? A. Yes.

Q. That is, each manufacturing company present represented had one vote? A. Yes.

Q. Now, getting back to paragraph 6 of Petitioner's Exhibit 3, the subject of rebates to jobbers was considered at a date subsequent to this Chicago meeting by the price and schedule committee? A. Yes.

Q. Were you present at that meeting A. Yes.

Q. Were the resale prices to jobbers considered by the
2 price and schedule committee? A. Yes.

Q. You were present? A. Yes.

Q. And the other members of the committee were present? A. Yes.

Q. Referring to paragraph 4, were the selling prices to the jobbers to be established through the licensor by the price committee appointed by the various manufacturers —were those selling prices considered by the price and schedule committee? A. The general plan was.

Q. The general plan was discussed? A. Yes.

Q. And you and the other members were present?

A. Yes.

3 Q. Did that price and schedule committee also consider matters referred to in paragraph 3, namely, the amount of penalties to be imposed for failure to observe the terms of the license contracts?

A. Yes, although no penalties were arrived at.

Q. I want to ask you a few questions about that last side remark of yours. The licensing arrangement as finally determined upon provided that the manufacturers should pay you $5 a day for each furnace operated. The arrangement also provided that if they observed the terms of the licensing arrangement you should pay them back what per
4 cent.? A. 80 per cent.

Q. Now, look at paragraph 9 of the copy of that license arrangement, which I will subsequently offer in evidence.

THE WITNESS: Are you looking at the last one?

MR. GROSVENOR: I will show you the one which purports to be the licensing arrangement (indicating).

THE WITNESS: Yes, sir.

Q. I show you a paper and ask you whether that is a copy of the licensing contract between the several manufacturers and you which was entered into? Is that a copy in its final form? 1

A. Yes, according to the identification marks there.

Q. I will read paragraph 9: "In case of failure on the part of the Licensee to comply in any particular with the terms of this agreement during any month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited as penalty for such violation and shall at once notify the Licensee to that effect." The agreement as finally provided contained that clause? A. Yes. 2

Q. (Reading again from this memorandum): "7. The length of the rebate periods shall be three months beginning April 15, 1910, with the exception of the first period, which shall end July 1. 8. The license agreement and resale prices shall become effective April 15, and the agreement to be executed between the manufacturers and jobbers shall contain a clause to the effect that all material purchased or on hand previous to the above date shall be sold at the resale prices that may be established." The licensing arrangement did not go into effect April 15? A. No.

Q. What was the date? 3

A. June 6, to the jobbers, and June 1 to the manufacturers.

Q. Now, at that meeting of March 30, in New York City, was not a resolution adopted similar to Exhibit No. 2 attached to the petition? A. Yes.

Mr. GROSVENOR: If I have not already done so, I offer the memorandum agreement now as "Petitioner's Exhibit No. 3."

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 3."

Mr. GROSVENOR: I now offer in evidence, as "Petitioner's Exhibit No. 4" resolution referred to, adopted March 30, it appearing undated. 4

The resolution referred to was then marked and filed as "Petitioner's Exhibit No. 4."

Q. I will ask you, Mr. Wayman, if that is the original copy (indicating)?

A. That is the original copy, but not entered into on March 30.

1 Q. When was it entered into?
A. March 29, and it was undated.
Q. Was there a meeting that day? A. Yes, sir.
Q. Where? A. At the Hotel Astor.
Q. This conference in March, then, lasted two days?
A. Yes, sir.
Q. And the same people were present both days?
A. Not all; no, sir.
Q. Mostly? A. Yes, sir.
Q. And the same matters were discussed both days?
A. Yes, sir.

2 Q. This resolution, filed as "Petitioner's Exhibit No. 4," embodies in some degree the idea contained in the last part of paragraph 8 of the memorandum of agreement, which you say you drew up March 2, does it not?

THE WITNESS: I did not catch the meaning of that, Mr. Grosvenor; will you read the question to me?

The stenographer then read the last question.

A. Yes, sir.

3 Q. (Reading on from the memorandum of agreement, marked "Petitioner's Exhibit No. 3"): "9. The details of contract forms between the manufacturers and the licensor shall be drawn up by the licensor and submitted for approval at the next special meeting to be held in New York City." A. Yes.

Q. Were the details of the contract forms between the manufacturers and licensor discussed at that Chicago meeting?

THE WITNESS: At the Chicago meeting?
Mr. GROSVENOR: Yes.

A. No.

4 Q. They were discussed at the March 30 meeting?
A. Yes.
Q. And at the meeting on March 29?
A. Yes, somewhat.

Q. The next special meeting referred to here in paragraph 9 was the meeting on March 29? A. Yes.

Q. (Reading): "10. The licensor will also submit the same covering agreement between the manufacturers and jobbers." Did you submit at the meeting of March 29 and

30 a contemplated agreement to be entered into between the manufacturers and the jobbers? A. Yes. 1

Q. And the terms of those contracts were discussed at the meetings of March 29 and 30? A. Only in a small way.

Q. (Reading): "11. The following 'preferential discounts' from the selling prices established by the licensor will be allowed the various manufacturers on sales to jobbers only." When was that pencil notation "on sales to jobbers only" incorporated?

A. I am not sure, but I think I put that in some time after some of these manufacturers had signed.

Q. What do you mean by a preferential discount? 2

A. A leeway.

Q. To whom? A. To the jobber.

Q. You mean to the manufacturer, do you not?

A. It might be construed both ways.

Q. Then we come to the schedules and the list of manufacturers enumerated in a column? A. Yes.

Q. Opposite the names of certain manufacturers are certain percentages? A. Yes.

Q. What do you mean by those percentages?

A. For instance, the Union Sanitary Manufacturing Company's price to a jobber on Schedule No. 1 goods would be 5 per cent. below the Standard's. 3

Q. In other words, in this contemplated licensing arrangement which you were to enter into, the licensing contract which you proposed to enter into with the Union Sanitary Manufacturing Company was to allow the Union Sanitary Manufacturing Company to make a 5 per cent. extra discount? A. Yes.

Q. In addition to those allowed the Standard? A. Yes.

Q. In other words, the Union was to be allowed to sell 5 per cent. cheaper to the jobber, is that right? A. Yes.

Q. Then, these percentages indicate the special extra preferentials which the manufacturers were allowed to make to the jobbers? A. Yes. 4

Q. As a matter of fact, the final licensing arrangement contemplated a certain series of discounts which each manufacturer was to allow the jobber? A. Yes, in addition—

Q. Just one minute. These columns of percentages in this memorandum of agreement refer, then, do they not, to the special discounts which these manufacturers were to be allowed to make?

A. In addition to the regular discounts, yes.

Q. What do you mean by the regular discounts?

A. Those printed in the license agreement—those printed in the jobbers' license agreement.

Q. And were the same for all manufacturers? A. Yes.

Q. And these were the special preferentials, because they were the discounts which distinguished the manufacturers from each other? A. Yes.

Q. Looking at that list, the Standard Sanitary Manufacturing Company, the Wolff Company, the United States Sanitary Manufacturing Company, Kohler, Barnes, Cahill and Mott, it was contemplated, should be allowed no preferential? A. Yes.

Q. In other words, their discount to jobbers should be simply the regular discount? A. That is right.

Q. Now, these manufacturers which were to be allowed preferentials were the smaller manufacturers, were they not? A. Yes.

Q. Of the list of manufacturers stated there will you point out those who did not enter into the arrangement?

A. Kohler, Clymer, Blairsville and Iron City.

Q. And the other 15 entered into it? A. Yes.

Q. And in addition to them, what other?

A. The Kerner Company.

Q. You were hoping at that time to enter into licensing arrangements with these four who finally declined?

Mr. NOBLE: I object to counsel asking the witness what he was hoping.

Mr. GROSVENOR: Read the question.

The stenographer then read the last question.

A. Yes.

Q. It was your intention to secure licensing arrangements with those 4, if possible? A. Yes, sir.

Q. Did you write letters to Mr. Kohler urging him to join the licensing arrangement? A. I believe I did.

Q. Did you send telegrams to him? A. Yes.

Q. Did you see him personally? A. Yes.

Q. Did you with Mr. Torrance ever see Mr. Kohler and suggest that he join? A. No.

Q. But you saw him by yourself? A. Yes.

Q. How about the Iron City, did you try to induce them to enter? A. Yes. 1

Q. Did you write to them? A. No.

Q. Did you see them personally? A. Yes.

Q. Who? A. Mr. Kelly.

Q. What is his position?

A. Secretary-treasurer of the Iron City Manufacturing Company.

Q. Now, the Clymer Company, did you endeavor to induce them to enter? A. I believe I did.

Q. You sent them the same circulars which you sent to the other manufacturers at the time this arrangement was 2 being made? A. Yes.

Q. The same circulars as you sent to Kohler and the Blairsville people and all of them? A. Yes, sir.

Q. Did you see the Blairsville people?

A. I sent them circulars.

Q. Who is in charge of that company?

A. Mr. Cook is president. My dealings were with Mr. Shipman, the treasurer.

Q. Did you know of any other manufacturer that entered into licensing arrangements? A. Yes, Kerner.

Q. They entered into one? A. Yes. 3

Q. Were they manufacturing lavatories? A. Yes.

Q. And kitchen sinks?

A. Yes—I would not be positive of that.

Q. How many furnaces do they have? A. Three, I think.

Q. How many has the Standard Sanitary Manufacturing Company? A. Eighty-nine.

Q. Kerner is a small factor in the trade? A. Yes.

Q. But you subsequently acquired them? A. Yes.

Mr. NOBLE: I object to word "acquired."

Q. That is, you executed a license with them? A. Yes.

Q. Who were the others, other than these on this list? 4

A. The Louis Lipp Company, Cincinnati.

Q. How much of a concern were they? A. I don't know.

Q. Do they cut much of a figure in the trade?

Mr. NOBLE: I object to that question. I don't know what that means. I don't know what you mean by asking if they cut much of a figure.

Q. Well, are they an important factor in the trade?

A. That is pretty hard to say.

Q. How many furnaces have they? A. I don't know.

Q. You know they do not have more than one or two furnaces?

A. I don't know how many they have, except by hearsay.

Q. What is the hearsay?

Mr. NOBLE: I object to that.

Q. Well, you keep informed as to conditions existing in the sanitary enameled iron ware trade?

A. As far as possible.

Q. You are as cognizant as any man in the trade, are you not?

Mr. NOBLE: I object to that. How does he know that?

A. I don't know, I think not.

Q. Well, Louis Lipp is not on this list? A. No.

Q. You have made efforts to get Louis Lipp?

A. Yes, sir.

Q. Did you write to him? A. Yes.

Q. Did you see him? A. Yes—no.

Q. You have not seen him? A. No.

Q. But you wrote to him and he declined?

A. I did not hear from him.

Q. Are there any other manufacturers outside of this list whom you tried to get? Do you recall any?

A. No. May I make a statement here?

Mr. GROSVENOR: Is it in answer to the last question?

THE WITNESS: No, previous to that. You asked if I saw Louis Lipp.

Mr. GROSVENOR: Yes.

THE WITNESS: No, not personally.

Q. Did you see any representative of the company?

A. Yes, Mr. Weil, the secretary.

Q. What did he say?

A. That business had been in a deplorable condition and—

Q. Well, did he or not enter into it?

Mr. NOBLE: Let him answer.

Mr. GROSVENOR: Whether Louis Lipp accepted his proposition or not is all I want. Did he or not accept? 1

A. No.

Mr. NOBLE: I object to the witness being interrupted, and I ask the stenographer to read the original question.

The stenographer then read the last question.

THE WITNESS: I forgot the Washington Iron Works of Los Angeles.

Q. Now, put it this way: What manufacturers other than the manufacturers on this list did not enter into it? 2

A. The Louis Lipp Company, the Washington Iron Works, the Rundel Manufacturing Company, Jones Holloware Company, Jacob Vollrath & Sons Manufacturing Company, and a concern of Columbus whose name I do not know.

Q. Are any of those concerns large factors in the trade?

A. I should say not.

Q. Do any of them manufacture bathtubs? A. Some.

Q. Which ones?

A. I believe the Washington Iron Works.

Q. How long have they been going? 3

A. Approximately a year and a half or two years.

Q. Do you know how many furnaces they have? A. No.

Q. One or two? A. Not over—no, I do not.

Q. Well, take the Jones Holloware Company; do they manufacture any lavatories? A. I believe a few.

Q. Kitchen sinks? A. Yes.

Q. How many furnaces for manufacturing sanitary enameled iron ware have they? A. I don't know.

Q. Now, of those you mentioned you say you tried to get Louis Lipp? A. Yes.

Q. Did you try any of the others? 4

A. The Washington Iron Works only.

Q. Did they enter into any arrangement? A. No.

Q. Why didn't you try the others?

A. I didn't consider them of enough importance to try.

Q. Now, coming back to the memorandum of agreement (reading): "12 The length of time for which the license agreement will be entered into and such other details as may be necessary for the perfection of the arrangement to

1 be determined at the next meeting of the various manufacturers." When was the next meeting referred to?

A. I didn't know then; the next meeting was the 29th and 30th of March.

Q. Did you discuss at that meeting the length of time for which the license agreement should be entered into?

THE WITNESS: The Chicago meeting?

Mr. GROSVENOR: No, the March 29 meeting?

A. No.

Q. For how long was it entered into? A. Two years.

2 Q. Who finally decided it? A. I did.

Q. Was it referred to the price and schedule committee?

A. Yes, sir.

Q. And that meeting was prior to the signing of the contracts? A. Yes.

Q. And prior to the assignment of the patent to you?

THE WITNESS: That is what?

Mr. GROSVENOR: I say was the meeting of the price and schedule committee to which we have referred this morning held previous to the assignment of the Arrott patent to you?

3

A. No—Oh, previous to the assignment—yes. It was held in April.

Q. For what period of time was the Arrott patent assigned to you?

A. Two years. I want to change that—

Mr. GROSVENOR: Well?

THE WITNESS: Your question was for how long the assignment was made?

Mr. GROSVENOR: Yes.

THE WITNESS: That was indefinite.

4

Q. Wasn't there an agreement at the same time which provided that the assignors to you had the power to terminate the assignment at the end of two years if they wished?

Mr. NOBLE: I object to that.

Q. Then, Mr. Wayman, will you look at Exhibit 5 attached to and made part of the petition on page 35. There is there what purports to be an agreement executed by you on the 4th of May, 1910, with the Standard Sanitary Manu-

facturing Company. Was such an agreement entered into? 1

A. Yes.

Q. Was that agreement executed at the same time as the assignment of the patent, which is made Exhibit 6 of the petition and is also dated May 4, 1910?

A. It was made the same day, but previous to the assignment of the patent.

Q. The agreement for the assignment was made previous to the assignment? A. Yes.

Q. Then, at the time this assignment of the Arrott patent was made to you, you had executed the agreement which is made Exhibit 5 of the petition? 2

THE WITNESS: At the time the assignment was made?

Mr. GROSVENOR: Read the question, please.

The stenographer then read the last question.

A. Yes.

Q. They were both on the same day? A. Yes.

Q. Did you execute one and then the other at once?

A. Yes.

Q. I now show you a paper and ask you if that is the original of the agreement which is made Exhibit 5 of the 3 petition? A. Yes.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit 5."

Paper referred to was then marked and filed as "Petitioner's Exhibit 5."

Q. I show you a paper and ask you if that is the assignment which is made Exhibit 6 of the petition? A. Yes.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 6."

The paper referred to was then marked and filed 4 as "Petitioner's Exhibit No. 6."

Q. Who drew up this Exhibit No. 5? A. My attorneys.

Q. Who are they? A. Bakewell & Byrnes, of Pittsburg.

Q. When was that drawn up? A. In about the middle of March.

Q. I show you paragraph 2nd and call attention to the word "two" in handwriting; whose handwriting is that? A. That is mine.

1 Q. When was that written in?

A. Previous to the execution of the agreement.

Q. On the same day? A. Yes.

Q. Now, the meeting of the price and schedule committee was when?

A. Between April 6 and 15, I believe.

Q. What is the purpose of that paragraph providing for a reassignment?

THE WITNESS: Which paragraph is that?

Mr. GROSVENOR: This one (indicating).

2 A. That covered the length of time I had purchased the patent for, and if it was not desired to be renewed, the party who originally held the patent could reclaim it.

Q. The assignment was executed after that agreement was signed? A. Yes.

Q. Now, Mr. Wayman, the number of signatures at the end of this memorandum of agreement, which you say was drawn up on March 2nd, 1910— A. (Interrupting.) Yes.

Q. (Continuing): And which is made Exhibit No. 3, when was the signature of the McCrum-Howell Company attached? A. About March 7.

3 Q. March 7? A. Yes.

Q. Read the names and state the dates, as far as you can.

A. L. Wolff Manufacturing Company, March 3rd; that was the first signature; The Standard Sanitary Manufacturing Company signed March 5th; United States Sanitary Manufacturing Company, March 5; A. Weiskittel & Son Company, March 6, Sunday; McCrum-Howell Company, March 7; Blairsville Enameled Ware Company, March 8; I am not positive about the date of the signature of the National Sanitary Manufacturing Company; I believe it was the 9th. The Barnes Manufacturing Company signed March 10; 4 Humphryes Manufacturing Company was March 10; the Union Sanitary Manufacturing Company was about the 15th; the Wheeling Enameled Iron Company was the 17th. St. Patrick's Day.

Examination suspended.

At this point a recess was taken for one hour, the hearing to resume at 2 o'clock p. m.

After Recess. 1

EDWIN L. WAYMAN, resumed the stand for continuation of direct examination, and testified as follows:

DIRECT EXAMINATION BY Mr. GROSVENOR (continued):

Q. How did you obtain these signatures to this memorandum of agreement?

A. I went around to the different companies and had them sign it.

Q. On February 1, there was a meeting, was there not, of the members of the Sanitary Enameled Ware Association, that is February 1, 1910? 2

A. It was on or about that time, yes.

Q. Where was that meeting? A. Pittsburg.

Q. Were the various companies which signed this memorandum of agreement represented at that meeting?

Mr. NOBLE: May I ask what memorandum you refer to?

Mr. GROSVENOR: I am referring to Exhibit 3.

A. Well, it would be hard for me to say if all were present who did sign that petition; I am under the impression that some of them were not. 3

Q. Now, I show you a book of typewritten sheets. These are the minutes of the Sanitary Enameled Ware Association, are they not? A. Yes.

Q. The page to which I direct your attention is the page of minutes for the meeting of February 1, is it not? A. Yes.

Q. Will you refresh your memory by looking at that page, and then state what companies were represented at that meeting, and who represented them?

A. Well, of course, here is given a detailed list of those who were present, and I have no doubt that it is correct. 4

Mr. GROSVENOR: I offer as "Petitioner's Exhibit No. 7" the minutes for that day, of the general meeting, it being the third regular meeting of the members of the Sanitary Enameled Ware Association, February 1, 1910, at Pittsburg, consisting of three typewritten pages.

Mr. NOBLE: May I inquire for what purpose these are offered?

1 Mr. GROSVENOR: I will, in two or three questions, indicate the purpose.

Mr. NOBLE: Then I object to the minutes being received in evidence for any other purpose than to show, as stated by the witness, Wayman, what companies were represented at the meeting referred to. The rest of the minutes I object to as immaterial, irrelevant, and incompetent.

Q. Do you recall the circumstances of that meeting, Mr. Wayman?

2 THE WITNESS: With respect to why it was called?

Mr. GROSVENOR: Read the question, please.

The stenographer then read the last question.

A. Some, yes.

Q. Do you recall a general discussion in reference to a proposed licensing arrangement that was had at the close of the meeting? A. No, not at the close of the meeting.

Q. That was had during the meeting? A. No.

Q. That was had that day? A. Yes.

Q. Was it had in the same room? A. Yes.

Q. Was it had immediately after the meeting? A. Yes.

3 Q. Were the people that were present representing the members of this association present at that meeting?

A. Not as representing them.

Q. They were present individually?

A. They were present individually.

Q. Did all of them stay for that meeting?

A. I couldn't say.

Q. How many of them stayed? A. The majority.

Q. The most of them? A. Yes.

Q. There was then an informal conference, was there not, in respect to a contemplated licensing arrangement?

4 A. Yes.

Q. Did the different members present take part in the discussion? A. I think not.

Q. Who did take part in the discussion?

A. I did most of the talking.

Q. Who did some of the talking?

A. I don't recall that any of them did any of the talking, with the exception of answering whether such a matter in its proposed rough form would meet with their approval.

Q. What proposed rough form? 1

Mr. NOBLE: At this point I renew my objection previously stated with reference to the minutes of February 1.

A. I called attention to the fact that in my estimation the principal trouble with the enameling business was the fact that seconds—

Q. Now, Mr. Wayman, I want to get the form of the licensing arrangement. I don't want the reasons. I want the description of this proposed form for licensing arrangements which you suggested. Did you have a paper there? 2

A. I had a rough outline.

Q. Did you have a draft? A. I had a rough outline.

Q. Was it this Exhibit No. 3 already in evidence?

A. No.

Q. Was it something similar to that? A. No.

Q. Who had drawn that up? A. I had.

Q. Alone? A. Yes.

Q. In consultation with any one? A. No.

Q. Who else discussed this licensing arrangement? A. I don't recall that anybody discussed it. After I had given a general outline of what I had in mind, I had an expression of opinion asked for as to whether those present would be in favor of the proposed arrangement. 3

Q. What did they say?

A. Some objected, some didn't know what to say, and the majority said they would.

Q. I call your attention to the last paragraph on the third page of Exhibit 7, reading as follows: "The Commissioner called attention to a request from the New York Jobbers that the manufacturers meet their committee to confer on the subject of resale prices and the recognition only of blue list jobbers. It was the sense of the meeting that the Commissioner advise them to the effect that the manufacturers would be pleased to meet their committee just as soon as their own plans on this subject were in more complete form, and that considerable progress in this direction had been made." In what shape was that request? 4

A. That came in the shape of a request to me as Commissioner of the Sanitary Enameled Ware Association.

Q. From whom? A. The New York Jobbers.

1 Q. From whom was it?

A. A man named Conchar, as Secretary of a New York Organization; I have forgotten the exact name of it. It was the Metropolitan Jobbers' Association, or something like that.

Q. To what plans do you refer when you say "it was the sense of the meeting that the Commissioner advise them to the effect that the manufacturers would be pleased to meet their committee just as soon as their own plans on this subject were in more complete form."

A. Why, the plans I presented to them.

2 Q. That is, the licensing arrangement? A. Yes.

Q. (Reading): "And that considerable progress in this direction had been made."

THE WITNESS: Can I state what was brought up?

Mr. GROSVENOR: I want to know what was done.

THE WITNESS: With respect to what?

Mr. GROSVENOR: You said here "the manufacturers would be pleased to meet their committee just as soon as their own plans on this subject were in more complete form."

3 A. That referred to the plans I had presented to them and the fact that I told them I had options on three enameling patents, and I was anxious to give the jobbers the impression that the manufacturers were favorably considering the proposition which I had put up to them.

Q. You say here "it was the sense of the meeting that the Commissioner advise them;" that is not an expression on your part?

A. Inasmuch as the request was directed to the manufacturers, I answered in the name of the manufacturers.

Q. You spoke there of an option on these patents? Was that option in writing?

4 A. No, not at that time, it was reduced to writing later.

Q. When was it reduced to writing?

A. About the middle of March.

Q. You have it in writing now?

A. You have the copies which were executed.

Q. Those are dated May 4?

A. But they were written out in about the middle of March.

Q. Were they signed? A. On May 4.

Q. When did you execute an option? 1

THE WITNESS: Which one?

Mr. GROSVENOR: Just answer the question: When did you execute an option?

THE WITNESS: Do you mean in writing or verbally?

Mr. GROSVENOR: Either.

A. In December and January.

Q. Which? A. Both.

Q. When was the first one?

A. The first was about the middle of December, the Ditheridge patent. 2

Q. This was what?

A. A verbal option to sell that patent.

Q. In December? A. Yes.

Q. Were all these options verbal? A. Yes.

Q. How much did you pay for them?

Mr. NOBLE: Objected to as incompetent, irrelevant and immaterial.

A. Nothing at the time.

Q. You did not pay anything? A. No. 3

Mr. NOBLE: I object to this line of questioning on the same grounds as above stated; the witness was about to say when he got these options.

Mr. GROSVENOR: Read the last few questions and answers, please.

The stenographer then read the questions and answers referred to.

Mr. NOBLE: The witness has been interrupted in answering when he got the options on the three patents mentioned.

Mr. GROSVENOR: Well, he was interrupted by his own counsel. 4

Q. You did not pay anything for the three patents?

A. No—not at the time.

Q. When did you first pay for them?

Same objection.

A. May 4.

Q. After the execution of these written contracts?

1 A. At the time I executed the contracts.
Q. You paid then?

Same objection.

A. Yes.
Q. You paid nothing for these options in December?

Same objection.

A. No.
Q. Whom did you negotiate with in December for the purchase of the Arrott patent? A. Mr. Dawes.
2 Q. Whom else of the Standard did you see with respect to the matter?

THE WITNESS: You mean as to the patent?
MR. GROSVENOR: The assignment of the patent to you.

A. I saw Mr. Ahrens.
Q. Who else?
A. That is all, with reference to the assignment of the patent.
Q. This was in December?
3 A. December, 1909, I saw Mr. Dawes, yes.
Q. Whom did you see with reference to the Ditheridge patent? A. Mr. Hammann.
Q. Of what firm? A. The J. L. Mott Iron Works.
Q. That was December too? A. December 15.
Q. And the Arrott patent was when? A. December 28.
Q. And the Lindsay patent?
A. That was early in January.
Q. Whom did you see?
A. John Clifford, of the Wolff Company, in Chicago.
Q. Is this Arrott patent a valuable patent?
A. I believe it is.
4 Q. At this meeting on February 1, you said you had a proposed plan; weren't those the words you used? A. Yes.

MR. NOBLE: A rough outline.
THE WITNESS: Yes, a rough outline.

BY MR. GROSVENOR:

Q. Was that rough outline in writing? A. Yes.
Q. Have you retained a copy of it? A. No.

Q. What was the first rough outline of the licensing arrangement that you have retained? 1

A. The one that I presented at the meeting at Mount Clemens—no, at New York City.

Q. Is not the memorandum of agreement, which you drew up early in March and took to these various manufacturers, an earlier form than that presented at the meeting on March 30?

A. That was not a license agreement, that earlier form.

Q. Doesn't that contemplate the entering into of the licensing arrangement?

THE WITNESS: You mean Exhibit 3? 2

Mr. GROSVENOR: Yes, Exhibit 3.

A. Yes.

Q. Isn't Exhibit 3 the earliest paper you have in the shape of a licensing agreement?

THE WITNESS: In the shape of an agreement, you mean?

Mr. GROSVENOR: Yes, in writing.

A. Yes, in writing—well, do you mean with reference to patents? 3

Mr. GROSVENOR: No, with reference to the licensing arrangement.

THE WITNESS: Yes, that is the earliest that I have retained.

Q. What did you do with the earlier forms?

A. I revised them from time to time and kept throwing them away as I revised them.

Q. The next form after that memorandum you took around was a printed form which you sent to the various manufacturers whom you wished to have enter into the arrangement with you? A. Yes, sir. 4

Q. That was before the meeting of March 29, was it not?

A. Yes, sir; but those papers were the same as I presented, I believe, at the meeting of March 29.

Q. I show you a printed paper of four pages, one page being blank, entitled "Sample copy of proposed form License Agreement?" A. Yes.

Q. And I ask you if that was the first printed copy of that license contract which you issued? A. I think so.

1 Q. That was issued by you to the different manufacturers about March 24, was it not?

A. I believe it was a little previous to that meeting.

Q. That is the copy which the different manufacturers had before them to consider at those meetings on March 29 and 30? A. Yes.

Q. You had sent each of them a few days prior to the meeting a copy of that contract, had you not? A. Yes.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 8," without the pencil marks.

2 Paper referred to was then marked and filed as "Petitioner's Exhibit No. 8."

Q. I now show you the printed paper entitled "License Agreement" which I have previously shown you, and ask you if that is not a copy of the agreement as entered into by you with the several manufacturers, in its final form?

A. Yes, sir.

Mr. GROSVENOR: I now offer that in evidence as "Petitioner's Exhibit No. 9."

3 The paper referred to was then marked and filed as "Petitioner's Exhibit No. 9."

Q. The paper which I have just shown you related to the agreement between you and the several manufacturers?

A. Yes.

Q. At the meetings of March 29 and March 30 were also considered the contracts which were to be entered into between the manufacturers and the jobbers, is that right?

A. A rough outline, yes.

Q. At the time you sent out this sample copy of the license agreement known as "Petitioner's Exhibit No. 8"?

A. Yes.

4 Q. (Continuing): You sent also a sample copy of the proposed jobbers' license agreement?

Q. That is a sample copy of the proposed agreement which the manufacturers were to enter into with the jobbers? A. Yes.

Q. I show you a printed sheet of four pages and ask you if that is a copy of the forms sent out on that day, about March 24? A. Yes.

Q. It is the same thing? A. Yes.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 10." 1

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 10."

Q. I show you another printed paper of four pages with another page attached, by perforations, entitled "Jobbers' License Agreement," and ask you if that is a copy of the contract finally accepted, or of the form finally accepted as the contract between manufacturers and jobbers?

A. Yes, that is the final one.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 11." 2

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 11."

Q. Coming back to Petitioner's Exhibit No. 3, which is the memorandum of agreement to which we have referred so often, and referring to page 3 and the so-called preferentials proposed to be allowed to the several manufacturers, how, at the time this draft was drawn up, had you obtained those figures?

A. That represented my idea of about what was right.

Q. Had you written to the different manufacturers asking them what preferentials they desired based on the Standard Sanitary Company list? 3

A. I wrote them, but whether it was before or after this, I do not recall.

Q. Do you recall writing a series of letters to the several manufacturers shortly after that meeting of February 1, asking them to send in their list of patents? A. Yes.

Q. You were subpœnaed to produce your letters with several companies, and among others there were letters exchanged between you and W. J. Kohler, or J. M. Kohler & Sons of Sheboygan, Wisconsin. Have you produced those letters? 4

A. No, I told you at the time that those letters were returned to Mr. Kohler, and Mr. Kohler told me he had destroyed them.

Q. Are those letters in your possession? A. No.

Q. What has become of them?

A. I returned them to the individual manufacturers at the time, all of the correspondence.

1 Q. We are only talking about Kohler's. What became of the Kohler letters?

Mr. NOBLE: The witness said he returned them.

A. I returned them.
Q. Returned them to Mr. Kohler? A. Yes.
Q. The copies of your letters to him?
A. Yes, and his replies.
Q. And the originals of his letters to you? A. Yes.
Q. Have you any of those letters now? A. No.
Q. I show you a letter purporting to be a copy of a
2 letter addressed by you to him on February 7, 1910, and ask you if that is a copy of the letter you addressed to him on that day?
A. That is approximately correct, as I remember it.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 12," with the statement that I intend to produce the original letter, or if not, to prove that the original has been lost, and that this is a true copy, that is, without the pencil marks. The letter which I now introduce is contained on two sheets and begins with the date, February 7, 1910,
3 third line, first page, and continues to the end of the words, "E. L. Wayman" on the second sheet, eighth line. I will read this letter. (Reading):

"February 7, 1910.

"Walter J. Kohler, President,
"J. M. Kohler Sons Company,
"Sheboygan, Wisconsin.

"Dear Sir:

"Referring to the informal discussion that took
4 place after the regular meeting regarding resale prices and license arrangement."

You are there referring to the meeting about which I asked you several questions?

A. I am referring to the meeting after the Sanitary Enameled Ware Association meeting.
Q. On February 1? A. Yes.
Q. At Pittsburg? A. Yes.

Q. (Reading): "Have you any patents that you would be willing to assign along with those owned by the other companies, for the purpose of this arrangement? If such is the case will you kindly send me the following information as quickly as possible." 1

This letter is practically a copy of a similar letter addressed by you to other manufacturers requesting a statement of what patents they had? A. Yes.

Q. This letter follows the general line of the letters you addressed about the same date to the other manufacturers? A. I think that is an exact copy.

Q. That is, it was a circular letter? 2

A. A circular letter to all the companies.

Q. Engaged in the manufacture of sanitary enameled iron ware?

A. Yes, sir; with the exception of a few small companies not in the list.

Q. And those small companies you did not consider important enough to take into the matter?

A. I did not at the time.

Q. Because they were not important enough?

A. That, and because I did not think I could accomplish anything by doing it.

Q. Then the letter shows the schedules, &c. (reading): "In order to get a preliminary statement of each manufacturer's ideas, will you kindly write me regarding the following:" Now, this series of letters you sent out about February 7, 1910, was addressed to these manufacturers before this memorandum of agreement was drawn up by you? 3

A. Yes, if that is the date.

Q. Nearly a month before? A. Yes.

Q. Therefore, at the time you drew that up you had received replies from those letters?

A. As I remember, some of them did not reply.

Q. Did most of them reply? 4

A. I cannot say; that is why I say this list in Exhibit 3 showed about what I thought the proper preferentials.

Q. Then this preliminary agreement, as you call it, was largely based on the information you had obtained from the manufacturers in response to this series of letters sent out by you on or about February 7?

A. I couldn't say that.

1 Mr. NOBLE: I object—don't reply until my objection is made.

Mr. GROSVENOR: I think the answers should come in before the objections.

THE WITNESS: That is not the usual practice.

Mr. GROSVENOR: And the objections as interposed this afternoon by counsel often have the effect of changing the witness' mind from the answer which he was going to give.

Mr. NOBLE: I object to the remarks of counsel, and the insinuation he wishes to have conveyed I resent.

2 My objections are urged upon the record, stump speeches of counsel for the Government to the contrary notwithstanding.

BY Mr. GROSVENOR:

Q. Now, going on you say, "In order to get a preliminary statement of each manufacturer's ideas, will you kindly write me regarding the following: 1. Using the Standard Sanitary Manufacturing Company's published prices as a basis, what differential, if any, do you believe your company would require in order to obtain its fair

3 share of the business?" There, I take it, you were referring to the differentials which were subsequently allotted to the various companies, as you testified this morning? A. Yes.

Q. Then follows the preferential discount, Schedules 1, 2, 3 and 4, etc., and leaving a place here (indicating)?

A. Yes, sir.

Q. And you intended him to indicate here what differential he thought he should get? A. Yes.

Q. That is from those three schedules, I mean. You only mentioned here three schedules, isn't that right?

A. Four.

4 Mr. GROSVENOR: Yes, four, that is right.

THE WITNESS: Four, yes. That was a brief outline of the classes of goods at that time, as far as I had gone.

Q. (Reading): "2. How many active furnaces do you anticipate operating the balance of the year? This information is necessary in order to figure out the total amount of royalty. Thanking you in advance for this information as promptly as possible, I am, E. L. Wayman." You enclosed

with the letter the schedules which follow, respecting preferential selling discounts to jobbers and the patents? 1

THE WITNESS: You mean attached to this letter to Kohler?

Mr. GROSVENOR: Yes, you enclosed them with the letter.

A. I don't think so; no, I don't think so.

Q. Do you recall sending him anything like that at any time?

A. I recall sending to the manufacturers the list of patents I had under consideration; now, whether it went with this letter, I am not prepared to say. 2

Q. You don't know whether you sent it to Kohler or not?

A. No, that looks to me like three or four letters run in together there.

Q. You do state that, so far as your signature is concerned—

A. (Interrupting): That ends the letter.

Q. Taking up Petitioner's Exhibits 8 and 9, you stated that Exhibit No. 8 was the proposed form of license agreement which you issued to the different manufacturers about March 24? A. Yes. 3

Q. And that Exhibit 9 was the form of the license agreement between you and the licensed manufacturers as finally adopted? A. Yes.

Q. Mr. Wayman, how many of these manufacturers finally entered into a license arrangement with you?

A. Sixteen.

Q. Most of them were executed on what day?

A. May 6.

Q. Where? A. In New York City.

Q. Where in New York City? 4

A. At the office of Noble, Jackson & Hubbard.

Q. Are they lawyers? A. Yes.

Q. How many were executed on that day?

A. Fourteen, I think.

Q. Were you present at the time? A. Yes.

Q. Was there a general meeting of these manufacturers at the time? A. To execute these licenses, yes.

Q. Were they all executed together? A. No.

Q. Were they executed one after the other? A. Yes.

1 Q. Were all the manufacturers present when the agreements were executed? A. No.

Q. Most of them? A. Yes.

Q. How were they called out?

A. I had them in alphabetical order by firms.

Q. Did they wait until all were present before they called the first? A. No.

Mr. NOBLE: I object to the question. The witness said that he called them up, and the question was, "Did they wait until all were present until they called the first."

2 Q. You called them up? A. Yes.

Q. In alphabetical order? A. Yes.

Q. Who was the first alphabetically?

A. The Barnes Manufacturing Company.

Q. Where did you meet there in the office?

THE WITNESS: In what room, do you mean?

Mr. GROSVENOR: Yes.

A. A general assembly room.

Q. A general assembly room?

A. Or meeting room, I don't know what they call it.

3 Q. This May 6th was the day after the assignment of the patent to you? A. No.

Q. What day was the Arrott patent assigned you?

A. The fourth.

Q. And the Ditheridge patent? A. The fifth.

Q. The Lindsay patent? A. The fourth.

Q. There had been a call for that meeting on May 6th several days before, had there not? A. Yes.

Q. How long before had the call been issued?

A. I cannot recall exactly.

Q. Well, approximately; a week or ten days, wasn't it?

4 A. I should say four or five days or a week.

Q. At any rate before the assignment of the patents to you?

A. I couldn't say; I don't know; it might be and it might not.

Q. Taking up Exhibit 8 and reading paragraph No. 2, it says: "The Licensor hereby agrees to suspend his claims against the Licensee and its customers or patrons for damages or profits which he may be entitled to receive for any

claims for any past infringement of said patent by said Licensee, as long as said Licensee continues to perform all of its obligations under this contract." Now, this assignment to you was on May 4? A. Yes. 1

Q. You entered into the contract on May 6?

A. Yes, sir.

Q. Did the assignment to you of the patent assign any right to sue for any possible past infringement?

THE WITNESS: Assign any right to sue?

Mr. GROSVENOR: Assign any right to you to sue for any possible past infringement.

Mr. NOBLE: The assignment is in writing, and I object to any question asking the witness what the contract means or how it acts. The instrument speaks for itself. 2

Mr. GROSVENOR: What do you say in answer to that question?

THE WITNESS: I understand that on advice of counsel I should refuse to answer it.

Q. Well, paragraph 5, Mr. Wayman, of Exhibit No. 8 states: "This agreement is entered into with the understanding that the Licensee has the privilege of quoting to jobbers only the following additional discounts from the regular selling prices to the jobbers as established by the Licensor. These additional discounts when given shall appear on the invoices rendered to the jobber." Now, will you look at that paragraph. There are no discounts there stated, are there? A. No. 3

Q. It was the purpose of the meeting of March 29 to consider among other things the discounts or preferentials which should be added under paragraph 5.

Mr. NOBLE: I object to the question in its present form. Allow the witness to testify. The objection is that the question suggests the form of answer that the counsel desires. 4

Mr. GROSVENOR: It is proper with a hostile witness.

Mr. NOBLE: The witness has not shown any hostility, and the attitude of counsel for the Government is the only hostility which has been seen here by anybody.

1 A. When the meeting of March 29 and 30 was called, I hardly thought it was possible to get all these details whipped into shape.

Q. So you left the blank there?

A. Yes—no, that doesn't follow because I had those schedules on an attached sheet of paper, as I remember it, together with the differentials.

Q. Doesn't paragraph 5 refer to the differentials which manufacturers were to allow?

A. Yes, but the schedule is not complete, as I testified before.

2 Q. Will you look at the separate sheets entitled "License Agreement," similar in form to Petitioner's Exhibit 9, and I will ask you if these are the original contracts entered into by you with the licensed manufacturers, whose names are attached to the papers?

Mr. NOBLE: In producing these original contracts counsel requests counsel for the Government to substitute for these originals compared copies as exhibits, as these are of value to the witness, Wayman, the licensor.

Mr. GROSVENOR: I offer in evidence these agree-
3 ments as "Petitioner's Exhibits Nos. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28."

Mr. NOBLE: I desire to explain that those instruments are complete in so far as they themselves go, but there should be attached to them the schedules mentioned in them. I want you to understand that the schedules referred to in these license agreements are the jobbers' license agreements and the price lists.

Q. Now, Mr. Wayman, in these originals which I have just introduced, the differentials allowed to the different
4 licensed manufacturers are stated under paragraph 5 of the sample copy of the proposed license agreement?

A. Yes, they are stated there.

Q. In the originals? A. Yes.

Q. Exhibit 8, which, as stated, was the sample copy of the license agreement issued by you about March 24, contains no reference to a Commission? A. No.

Q. The final agreement executed on May 6 does con-

tain such a provision under paragraph 6, which has been inserted in the paragraph so numbered? A. Yes. 1

Q. Was not that provision respecting the appointment of a Commission the result of a resolution passed at the meeting of March 30, which has already been made Petitioner's Exhibit No. 2? A. No.

Q. How did that provision respecting the appointment of a Commission come into the contract, if it was not the result of that resolution of March 30?

Mr. NOBLE: I object to that form of question. The witness has frankly answered no. The question in that form contains the suggestion that the witness has not been candid in his answer. 2

Mr. GROSVENOR: Counsel states that there is no implication that the witness has not been frank, but simply asks the plain question.

A. At the meeting I held with the committee at Mount Clemens, one of the committee wanted me to transfer my options on patents to a holding company, and I objected to that very strongly and suggested that I would employ an advisory committee. I took the matter up with my counsel with reference to this paragraph, and it was composed by us as it appears in the license agreement. 3

Q. At this time you had paid nothing for the options of which you speak?

Mr. NOBLE: Objected to on the ground that it is incompetent, irrelevant and immaterial.

A. No.

Q. Now, Mr. Wayman how was this Commission appointed?

A. They were elected by ballot after the license agreements were entered into. 4

Q. Who are the members of the Commission?

A. The members of the Commission are Howard T. Gates, Secretary of the McCrum-Howell Company, New York City; A. H. Cline, Jr., Secretary United States Sanitary Manufacturing Company; T. R. Barnes, Secretary and General Manager of the Barnes Manufacturing Company; F. J. Torrance, First Vice-President of the Standard Sanitary Manufacturing Company of Pittsburg; H. M.

1 Hoelscher, Secretary L. Wolff Manufacturing Company, of Chicago; E. L. Wayman, Chairman.

Q. Were you elected by ballot? A. No.

Q. The other five were? A. Yes.

Q. Each licensed manufacturer having one vote?

A. Yes.

Q. Was this election held at the time the agreements were signed? A. Immediately after.

Q. On May 6? A. Yes.

Q. Did you have a ballot? A. No.

Q. You had no way to indicate you selection?

2 A. Not according to the license, but I did indicate my selection.

Q. How?

A. By suggesting to the assembled licensees that inasmuch as the committee which had met with me at Mount Clemens was familiar with this proposition in its entirety, that I thought they could be served best by making this Commission permanent as the Commission provided for in this agreement, and that was done unanimously.

Q. Then the Commission is the same as the Mount Clemens Commission? A. Yes, sir.

3 Q. And it was elected by ballot at this meeting?

A. Yes, I wish to call your attention to the paragraph which says that the five shall be designated by a majority of the parties holding licenses similar to this license, and which specifies that I shall have no vote in the matter.

Q. As I have previously pointed out to you, the form of contract which you sent around on March 24 did not contemplate the appointment of the Commission? A. No.

Q. That idea was first suggested at the Mount Clemens meeting? A. Yes.

Q. Who first suggested it? A. I think Mr. Hoelscher of the L. Wolff Manufacturing Company.

4 Q. In paragraph 6 of Exhibit 8, the form issued on March 24, it is stated: "All terms, conditions, regulations and prices now established by the Licensor and set forth in Schedules attached to and made part hereof, shall be in force and effect until other terms, conditions, regulations and prices are substituted therefor by the Licensor, which substitution he is entitled to make from time to time hereafter by notice in writing to the Licensee." Now, in the final form of the contract—that is, in the contract as signed

May 6—those words "which substitution he is entitled to make from time to time hereafter by notice in writing to the Licensee" are changed to say: "which substitution can only be made by him with the approval of a majority of the members of the Commission, hereinbefore prescribed." According to the provisions, then, of the contracts between you and the manufacturers, terms and conditions relative to prices and discounts cannot be changed except with the approval of a majority of the members of the Commission? Is that right? 1

Mr. NOBLE: I object to the question. The instrument has been introduced in evidence by the Government and speaks for itself. 2

Mr. GROSVENOR: Counsel for Government states that he is endeavoring to ascertain the working arrangements of the combination as it exists today, and asks the question for that reason.

Mr. NOBLE: I object to the use of the word "combination."

A. I will say yes, with the additional provision that they cannot change the prices unless I assent to it.

Q. Where do you find that in the contract? 3

A. It is evident from reading the contract.

Q. Returning to Exhibit 8, that contract provides under paragraph 9 "in case of failure on the part of the licensee to comply fully with the terms of this agreement during any month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited (as hereinafter provided for), as penalty for said violation, and shall at once notify the Licensee to that effect." What unpaid rebates are meant there? A. The 80 per cent.

Q. (Reading): "Penalties shall be deducted from all unpaid rebates as follows;" then follow two paragraphs which were stricken out of the agreement as finally adopted? 4

A. Yes, that is true.

Q. When was that done?

A. In my negotiations with the committee.

Q. At Mount Clemens? A. Yes.

Q. So you retained it so as to read "9. In case of failure on the part of the Licensee to comply in any particular with the terms of this agreement during any

1 month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited as penalty for such violation and shall at once notify the Licensee to that effect." There again you refer to that 80 per cent.?

A. Yes, sir.

Q. Now, in Exhibit No. 8, paragraph 14, reads "This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of (blank) years from the date hereof, unless previously terminated as herein provided."

A. Yes.

2 Q. In Exhibit 9, the contract as finally adopted, the blank is filled in by the word "two." I understood you to say this morning that the period of two years was determined upon at Mount Clemens?

A. Yes, at my suggestion.

Q. Had you at that time any pecuniary interest in the patents by virtue of the payment of any consideration?

Mr. NOBLE: I object to the question, which calls for a conclusion, and further I object on the ground that it is immaterial and irrelevant in this case.

Mr. GROSVENOR: Just read the question, please.

3 The stenographer then read the last question.

A. No.

Q. On the third page of Exhibit 8 the schedule of patents is enumerated; all of those patents were omitted from the contract as finally adopted, except the Arrott, Lindsay and Ditheridge patents, is that right?

A. That is right.

Q. At whose suggestion were those omitted?

Mr. NOBLE: I object to the question as containing the insinuation that there was a suggestion.

4 Q. Well, why were they omitted?

A. I would like to answer that in detail. At the time I had all these patents in mind—

Q. What do you mean by "in mind"?

A. That is, with the idea of purchasing them, that I would try to standardize the method of manufacture and the best designs for goods in all factories.

Q. You would do it?

A. I would try to do that, yes. I found after investi-

gating the patents and advising with counsel, that they were immaterial for the purposes desired, most of them being design patents. I thereupon decided that I would attempt to license the manufacturers under enameling patents only, consisting of a basic patent known as the Arrott patent, and two other patents known as the Ditheridge patent and the Lindsay patent, which I considered to be infringements of the Arrott patent. 1

Q. Were you the owner of that concern up in Detroit?

A. I was a stockholder.

Q. Has that gone to pieces?

A. As far as marketing its product, it has; the property is simply lying there. 2

Q. How much did you pay for this Arrott patent?

A. Ten thousand dollars.

Q. How much did you pay on May 4?

A. $5,000, with a note for $5,000.

Q. Have you paid the note? A. No.

Q. How much did you pay for the Lindsay patent?

A. $500.

Q. And the Ditheridge patent? A. $500.

Q. By virtue of these patents you claim to control the disposition of the output of these licensed manufacturers? 3

A. Yes.

Q. And the total output was how much a year?

Mr. NOBLE: Objected to. He said he couldn't tell you.

Q. It is over ten millions a year, is it not?

A. I don't know. It would be purely a guess.

Q. Is it one million? A. Yes.

Q. It is more than one million? A. Yes.

Q. And it is a great deal more than five million?

A. Yes. 4

Q. The control of this vast business you claim to have acquired by the expenditure of how much money?

Mr. NOBLE: I object to the form of the question. The witness states he bought the patents.

Mr. GROSVENOR: The counsel for the Government states that the intention in the assignment of the patent is material in this case. These questions are addressed to the witness for the purpose of establish-

1 ing the purpose alleged in the petition. Will you read the last question?

The stenographer then read the last question.

A. Eleven thousand dollars.

Q. Of which you have paid out how much?

A. $5,750—$6,000.

Q. Now, these different manufacturers make reports to you, of course, under the terms of the contract, of the number of furnaces operating per day? A. Yes.

Q. Since the entering into of these contracts of May 6, the Standard Sanitary Manufacturing Company has been
2 operating how many a day? Well, leave that and I will ask you that later. You have been following your business, of course, pretty closely. Since May 6th how many furnaces have you had operating every day under the licensing arrangements?

Mr. NOBLE: You want just a rough answer?

Mr. GROSVENOR: I want the best.

A. Approximately 70 per cent. of the licensed furnaces.

Q. Approximately 70 per cent.? A. Yes.

Q. How many furnaces does that make?

3 A. In exact figures on that basis, 136½.

Q. And each of those is paying you how much per day?

A. Five dollars per day.

Q. And from that five dollars per day you pay a rebate to them of 80 per cent. if they observe the terms of the contract? A. Yes.

Q. Have they all observed the terms of the contract?

A. I don't know.

Q. Have you paid your 80 per cent.? A. No.

Q. Have you paid any of it? A. No.

Q. Is that because the date established in the contracts
4 for the retainment of the rebate has not yet arrived?

A. The date for the repayment has arrived, but I have not been able to find out if they are entitled to the rebate yet.

Q. In other words, you have not had an opportunity to have your auditors verify the books? A. No.

Q. You have had, then, 136 furnaces paying you $5 a day; that makes $680 a day? A. Yes, $680 a day.

Q. And these contracts provide that you shall receive

in this proportion for a period of two years, is that right? 1

A. That is right.

Q. And for this sum you have paid already only $6,000, is that right?

A. Yes, but you must consider the net and not the gross when you compare it with eleven thousand or six thousand dollars.

Q. I suppose these men have been observing their contracts and that you will pay the 80 per cent back; that leaves $136 a day? A. Yes.

Q. How large is your office force?

A. I have four people. 2

Q. Are they stenographers or clerks?

A. Two stenographers, one clerk, a bookkeeper and auditor.

Q. Where is your office? A. The Arrott building.

Q. How many rooms have you? A. Three.

Q. Now, taking up Exhibit 9, paragraph 10 provides "The restrictions herein contained as to the prices at which sanitary enameled iron ware is to be sold shall not apply to sanitary enameled iron ware sold and exported to foreign countries." Then added to that paragraph are these words: "such sales must be proved bona fide to the Licensor." A. Yes. 3

Q. These 16 licensed manufacturers cannot sell in this country any sanitary enameled ware except pursuant to these contracts with you, can they?

A. With the exception of goods for export.

Q. They can export goods, and in doing that they are not subject to any restriction? A. Not on the selling prices.

Q. Are there any restrictions on anything else?

A. No, what I meant by that remark was that although they are subjected to the observance of no selling prices, I do obtain my royalty.

Q. On anything— 4

A. (Interrupting): Manufactured in this country.

Q. And shipped over? A. Yes.

Q. That goes to swell your revenue? A. Yes.

Q. Taking up Exhibit 10, which you state was the sample copy of the proposed form of jobber's agreement between the manufacturers and the jobbers, and which was issued by you about March 24 to the manufacturers; that is it, is it not?

A. Yes.

1 Q. That again enumerates a long schedule of patents which were enumerated in the manufacturers' license agreement of the same day? A. Yes.

Q. That is the earlier form? A. Yes.

Q. Those are omitted in the final jobber's agreement for the reasons given? A. Yes.

Q. On page 2 of Exhibit 10 the discounts to the jobbers are stated for the different classes. If you will look at the final contract, which is Petitioner's Exhibit No. 11, you will see that there is a difference in the discounts allowed to the jobbers. Were those differences arrived at by consultation
2 of the price and schedule committee? A. No.

Q. How were they arrived at?

A. I simply put them in there of my own accord.

Q. That is, you inserted them in the preliminary agreement issued March 24 of your own accord? A. Yes.

Q. They were not determined upon at that time?

A. No.

Q. They were determined upon finally?

A. Yes, by myself.

Q. When were they determined?

A. About the tenth of May, I should think.

Q. That was after the signing of the agreements?
3 A. Yes, that is true.

Q. Then, these jobbers' agreements were not completed May 6? A. No.

Q. The form was practically completed?

A. Several changes were made after May 6; several were as late as June 2nd.

Q. Were those determined by the price and schedule committee?

A. They were approved by the price and schedule committee to whom I submitted them.

Q. What were the changes in the final form from the
4 preliminary form?

A. This was the most important change; this appears at the top of the final jobber's license agreement form, known as Petitioner's Exhibit No. 11: "Note, this contract must be executed by the purchaser in order to purchase licensed sanitary enameled iron ware."

Q. That line, you say, was inserted? A. Yes.

Q. But that is not a condition of the contract; that line

refers to a condition of the contract embodied later and known in the trade as what? 1

A. I think that is part of the contract.

Q. That note which you put there is not part of the contract, is it? A. I would so consider it.

Q. It is above the beginning of the words "This agreement made this (blank) day," is it not?

A. Yes, but I consider that a part of the contract. If by others it is not considered a part of the contract, it is further covered by my circular letter of June 3 as a condition which is provided for in paragraph 9 of the jobber's license agreement, which provides that the terms and rules 2 are subject to change from time to time, or rather until such other conditions are imposed by the licensor, which provision he has power to make from time to time.

Q. Now, as a matter of fact, whether it is part of the contract or not, you consider it as part of the contract?

A. I do.

Q. And you are directing the manufacturers to observe that part of the contract, are you not? A. Yes.

Q. In other words, in order for a jobber in the United States of sanitary enameled iron ware to be enabled to purchase any sanitary enameled iron ware from any of these 3 16 manufacturers, he must execute this jobber's license agreement, is that right? A. Yes.

Q. Now, in paragraph 7 of this same exhibit, No. 10, namely, the sample copy of the proposed form of jobber's agreement, issued by you March 24, you have stated the names of certain manufacturers who did not enter into licensing arrangements with you? A. Yes.

Q. Will you point those out?

A. The Blairsville Enameled Ware Company, Blairsville, Pennsylvania; Clymer Manufacturing Company, at Indiana, Pennsylvania; the Iron City Sanitary Manufacturing Company, Pittsburg, and J. M. Kohler Sons Company, Sheboygan, Wisconsin. 4

Q. At the time you issued this to the manufacturers, that is this sample copy which is Petitioner's Exhibit No. 10, you were endeavoring to persuade those four who did not enter into arrangements with you to do so? A. Yes.

Q. In paragraph 9 of Exhibit 11, which was the final form of the jobber's license agreement, I desire to direct your attention to the following: "The purchaser under-

1 stands that the resale prices of all ware manufactured under the Letters Patent enumerated herein, as established from time to time by the company, must be maintained by all licensed sanitary enameled iron ware manufacturers and by all jobbers and dealers, and that sales by one jobber to another cannot be made at any better prices than established in the sheets." Does that mean that if a jobber has signed this contract with a licensed manufacturer and another jobber has not signed, that the jobber who has signed cannot sell to the jobber who has not signed at any better than resale prices?

2 A. No, that does not express the meaning of it.

Q. What does it mean?

A. The object and meaning of this paragraph which reads: "Sales by one jobber to another cannot be made at any better prices than established in the sheets," was inserted for the purpose of preventing several jobbers lumping their purchases and obtaining a rebate to which they were not entitled.

Q. "Another" does not refer to one who has not signed? A. No.

Q. As a matter of fact, though, any jobber who has signed one of these contracts cannot sell his enameled ware
3 whether to a plumber or jobber at any other prices than those set out in the sheets? A. That is right.

Q. Then if a jobber who has signed is willing to sell to a jobber who has not signed, he must sell at the resale prices? A. Yes, or to a jobber who has signed.

Q. In your first jobber's license contract issued March 24, the amounts of sales which had to be made by the jobbers of the goods of the licensed manufacturers to entitle them to these additional discounts had not been ascertained or determined upon? A. No.

Q. Those were, however, arranged prior to the signing
4 of the final contract? A. Yes.

Q. Was it discussed at the meeting of March 29, what amounts these sales must be? A. No.

Q. Did the price and schedule committee take that up?

A. Yes.

Q. And determined the question after consultation with you? A. Yes.

Q. Determined it?

A. Yes, which I afterwards changed.

Q. With their consent? A. Yes. 1

Examination suspended.

The taking of testimony was then adjourned to the first day of November, 1910, at 9:30 o'clock a. m., at the same place.

Pittsburg, Pennsylvania, November 1, 1910.

Pursuant to adjournment the evidence for the petitioner was resumed as follows, with same counsel present: 2

EDWIN L. WAYMAN, a witness heretofore produced and sworn, resumed the stand for continuation of direct examination, and testified as follows:

DIRECT EXAMINATION (continued):

Mr. GROSVENOR: I offer in evidence as "Petitioner's Exhibit No. 29," a paper entitled 'Statements and Admissions of Defendants," signed by the solicitors for and of counsel with defendants.

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 29." 3

BY Mr. GROSVENOR:

Q. Mr. Wayman, I direct your attention to Exhibit No. 11, being the jobber's license agreement, and to paragraph 2 of that agreement. That paragraph states: "Goods will be sold to the purchaser, f. o. b. cars where factory is located." What factory is meant there?

A. Any of the licensed factories.

Q. That is, the factories of the licensed manufacturers?

A. Yes.

Q. Now look at page 9 of the petition of the Government for the list of defendants? A. Yes. 4

Q. Will you state after each corporation defendant where its factory is located?

A. Standard Sanitary Manufacturing Company, Allegheny and New Brighton, Pennsylvania and Louisville, Kentucky; A. Weiskittel & Son Company, Baltimore, Maryland; Barnes Manufacturing Company, Mansfield, Ohio; Cahill Iron Works, Chattanooga, Tennessee; Colwell Lead

1 Company, Elizabeth, New Jersey; the Day-Ward Company, Warren, Ohio; the Humphryes Manufacturing Company, Mansfield, Ohio; Kerner Manufacturing Company, Zelienople, Pennsylvania; the J. L. Mott Iron Works, Trenton, New Jersey; McVay & Walker, Braddock, Pennsylvania; the McCrum-Howell Company at Uniontown, Pennsylvania, their Norwich, Connecticut plant is not an enamel plant; The National Sanitary Manufacturing Company, Salem, Ohio; the Union Sanitary Manufacturing Company, Noblesville, Indiana; United States Sanitary Manufacturing Company, Monaca, Pennsylvania; L. Wolff Manufac-
2 turing Company, Chicago, Illinois, their Trenton plant is not a sanitary iron works; Wheeling Enameled Iron Company, Wheeling, West Virginia.

Q. Referring further to that Exhibit No. 11, paragraph No. 2, it continues: "At the prices given in the resale sheets for the various zones;" what is meant by the various zones?

A. The territorial divisions of the country.

Q. Of the United States? A. Yes.

Q. The sentence continues: "with full freight allowed on shipments of 200 pounds and over (subject to the freight tariff regulations herein provided for) to the list of cities
3 named in the various zones." Am I correct in stating then that the United States has been divided into 11 territorial zones for the guidance of the jobbers who use the resale price list?

A. Yes, with the following amendments, for the guidance and convenience in knowing what goods cost delivered in their respective cities.

Q. I show you what purports to be a price list under cover entitled "Price List, Edwin L. Wayman, Pittsburg, Licensed Sanitary Enameled Iron Ware, June 1, 1910," and direct your attention to what is page 5 of the white pages, the list of cities in freight zone No. 1. The cities there men-
4 tioned are the jobbing points in Zone No. 1, are they not?

A. Yes.

Q. Will you read the names of cities there stated?

A. I wish to say that this is not a complete book.

Q. This is the book which was issued June 1, 1910, is it not? A. Yes.

Q. When you say complete, you mean it is not complete to date? A. To date.

Q. It was complete on June 1, 1910?

A. It was not complete, but it was as much as I was able to issue at that time. 1

Q. State the name of the cities selected as jobbing points in Zone No. 1 as of June 1, 1910.

A. Anderson, Indiana; Albany, New York; Altoona, Pennsylvania; Bangor, Maine; Bayonne, New Jersey; Boston, Mass.; Bridgeport, Conn.; Brooklyn, N. Y.; Buffalo, N. Y.; Camden, N. J.; Cambridgeport, Mass.; Canton, O.; Cleveland, O.; Columbus, O.; Cumberland, Md.; Davenport, Iowa; Dayton, O.; Detroit, Mich.; Dubuque, Iowa; East Orange, N. J.; Elizabeth, N. J.; Elmira, N. Y.; Fort Wayne, Ind.; Grand Rapids, Mich.; Guttenberg, N. J.; Hampden, 2 Va.; Hartford, Conn., Indianapolis, Ind.; Jersey City, N. J.; Kalamazoo, Mich.; Lancaster, Pa.; Lansing, Mich.; Long Island City, N. Y.; Lynn, Mass.; Manchester, N. H.; Mansfield, O.; Menominee, Mich.; Muncie, Ind.; Newark, N. J.; New Bedford, Mass.; New Haven, Conn.; New Rochelle, N. Y.; New York, N. Y.; Norfolk, Va.; Paterson, N. J.; Peoria, Ill.; Philadelphia, Pa.; Portland, Me.; Providence, R. I.; Richmond, Va.; Rochester, N. Y.; Rockford, Ill.; Rutland, Vt.; Scranton, Pa.; Somerville, Mass.; Springfield, Mass.; St. Louis, Mo.; Syracuse, N. Y.; Terre Haute, Ind.; Toledo, O.; Trenton, 3 N. J.; Troy, N. Y.; Union City, Ind.; Utica, N. Y.; Washington, D. C.; Watertown, N. Y.; Weehawken, N. J.; Wilmington, Del.; Wilkes Barre, Pa.; Worcester, Mass.; Yonkers, N. Y.; York, Pa.

Q. Look now at page 6 and state the jobbing points for Zone No. 2.

A. Atlanta, Ga.; Birmingham, Ala.; Chattanooga, Tenn.; Charleston, S. C.; Columbia, S. C.; Jacksonville, Fla.; Knoxville, Tenn., Little Rock, Ark.; Savannah, Ga.; Memphis, Tenn.; Nashville, Tenn.; New Orleans, La.

Q. Those are the jobbing points used for Zones 1 and 2 4 by the manufacturers who have license arrangements with you?

A. Those are the jobbing points that I have established for Zones 1 and 2.

Q. And that are observed by the manufacturers? A. Yes.

Q. Now, state the jobbing points for Zone 3.

A. Cedar Rapids, Iowa; Davenport, Iowa; Des Moines, Iowa; Dubuque, Iowa; Duluth, Minn.; Fort Dodge, Iowa; Green Bay, Wis.; Kansas City, Mo.; La Crosse, Wis.; Lin-

1 coln, Neb.; Minneapolis, Minn.; Omaha, Neb.; St. Joseph, Mo.; St. Paul, Minn. and Sioux City, Iowa. The towns of Dubuque, Iowa, and Davenport, Iowa, were included in Zone No. 1 through an error.

Q. State the jobbing points for Zone 4.

A. Aberdeen, S. D. and Fargo, S. D.

Q. And for Zone 5.

A. Dallas, Texas; Fort Worth, Texas; Houston, Texas; Oklahoma City, Okla.; San Antonio, Texas; Wichita, Kan.

Q. And for Zone No. 6.

A. Denver, Col. and Pueblo, Col.

2 Q. And for Zone No. 7. A. Salt Lake City, Utah.

Q. Zone 8. A. Butte, Montana.

Q. Zone 9. A. Spokane, Washington.

Q. Zone 10. A. Los Angeles, Cal.; Oakland, Cal.; Portland, Ore.; Sacramento, Cal.; San Diego, Cal.; San Francisco, Cal.; Seattle, Wash.; Tacoma, Wash.

Q. Now, Zone 11. A. Phœnix, Arizona.

Q. Those 11 zones embrace the principal cities of the United States, do they not? A. They do.

Q. Referring again to Exhibit 11, the jobber's license agreement, the last page of that exhibit is attached in such
3 a manner as to be torn off, is it not? A. Yes.

Q. That page is contained in the printed petition on page 56? A. Yes.

Q. Under this licensing arrangement when a licensed manufacturer—by that I mean one who has entered into a licensing arrangement with you—enters into a contract with a jobber, this page of Exhibit 11, having been signed by the manufacturer and jobber is thereupon ma[illegible] to you? A. Yes.

Q. You then have a record of all the contracts made by all 16 of the licensed manufacturers with the several jobbers throughout the United States? A. Yes.

4 Q. And these jobbers are located at all these cities mentioned as jobbing points in the various 11 zones?

A. Yes, and some others.

Q. Then these jobbers are located throughout the United States? A. Yes.

Q. Now, referring to the list of defendants at page 9 of the printed petition, the Standard Sanitary Manufacturing Company, you state, has factories at Allegheny and New Brighton, Pennsylvania, and Louisville, Kentucky? A. Yes.

Q. The Standard has forwarded to you, has it not, then, forms detached from contracts with jobbers such as are found on the jobber's license agreement, which is Petitioner's Exhibit No. 11? A. Yes. 1

Q. These forms are with jobbers situated throughout the United States, are they not? A. Yes.

Q. Could you state that there are such contracts with jobbers situated in every part of the United States? A. No.

Q. In how many of the states of the United States have they entered into contracts with jobbers?

THE WITNESS: Your question had to do with cities named in these zones, and in all of those cities there are not jobbers. 2

Mr. GROSVENOR: I know that.

THE WITNESS: That is what I understood you to say.

Mr. GROSVENOR: Read the question, please.

The stenographer then read the last question.

Mr. GROSVENOR: I am not speaking of cities, but of states.

A. All with the exception of Arizona.

Q. That is to say, these contracts of the Standard Sanitary Manufacturing Company with jobbers are with jobbers in every state except Arizona? 3

A. Yes—just a minute, I will amend that. Did you say this jobber's contract?

Mr. GROSVENOR: The jobber's license contract.

THE WITNESS: You said the Standard Sanitary Manufacturing Company?

Mr. GROSVENOR: Yes.

THE WITNESS: The Standard Sanitary Manufacturing Company and others—

Mr. GROSVENOR: Now, wait a minute, you do not understand me. 4

THE WITNESS: Yes, I do.

Mr. GROSVENOR: I have only asked the question with respect to the Standard Sanitary Manufacturing Company. I will take up the others later.

THE WITNESS: Well, I will change my answer to, I don't know.

Q. In how many states of the United States are there

1 jobbers having contracts with the Standard, the forms of which have been sent to you? A. I don't know.

Q. These forms you keep at your office? A. Yes.

Q. You keep these forms for each one of the 16 licensed manufacturers? A. Yes.

Q. They are all kept in one file? A. No.

Q. They are all kept together, though?

A. In a series of files.

Mr. GROSVENOR: I will ask you to produce at the next session all those forms.

THE WITNESS: With each manufacturer?

2 Mr. GROSVENOR: With each manufacturer.

THE WITNESS: Would a list of names answer the purpose? It will take some time to go through all my files and get those contracts.

Mr. GROSVENOR: If you produce a list of all of them, it will serve the purpose.

THE WITNESS: I don't know offhand with whom each manufacturer has executed the contract, because each manufacturer has not executed the contract with all the jobbers. If that last will answer the purpose, that is all right.

3 Mr. GROSVENOR: Yes, that will do. Your subpœna, paragraph 3, calls for a list of the jobbers who have entered into the contracts with the licensed manufacturers, report of which has been made to E. L. Wayman in accordance with the agreement. Have you produced that list? A. Yes.

The list referred to was then handed to counsel.

THE WITNESS: Those that have executed contracts in that book are checked. These names (indicating the typewritten sheet attached to the book) do not appear in that book, but have executed contracts.

4 Q. Mr. Noble has handed me a small book headed "List of Jobbers of Plumbing Supplies in the United States, July, 1910." In that book are given the names of jobbers situated in the States of Alabama, Arkansas, California, Colorado, Kentucky, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kansas, Connecticut, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee,

Texas, Vermont, Virginia, Washington, West Virginia and Wisconsin. Is that correct? A. Yes. 1

Q. He has also handed me a list of jobbers entitled, "Jobbers having signed not in Blue Book," said jobbers being situate in the States of Florida, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, West Virginia and California. Is that correct? A. Yes.

Q. In this list of jobbers in the Blue Book there are certain pencil notations opposite certain names. What do they mean? 2

A. Those indicate which jobbers have signed the license agreement with any of the manufacturers.

Q. Please look through this book, consisting of 32 pages, of which 28 give the names of 389 jobbers, and point out such names as have not any checks opposite them.

A. Denver Pump & Plumbing Company, Denver, Col.; Andrew J. Geary, Chicago, Ill.; Illinois Malleable Iron Company, Chicago, Ill.; Kinsey & Mahler Company, Peoria, Ill.; Chandler Pump Company, Cedar Rapids, Iowa; the Fairbanks Company, New Orleans; F. W. Webb Manufacturing Company, Boston; Cambridge Plumbing Supply Company, Cambridgeport, Mass.; New England Plumbing Supply Company, Springfield; Baker Lead Manufacturing Company, Worcester, Mass.; Grand Rapids Supply Company, Grand Rapids; Emerson-Corbin Supply Company, Menominee, Mich.; Duluth Plumbing Supplies Company, Duluth, Minn.; D. M. Gilmor Company, Minneapolis; Western Supply Company, St. Paul; Bayonne Supply Company, Bayonne, N. J.; Ronalds & Johnson Company, Camden, N. J.; American Plumbing Manufacturing Company, Brooklyn; John F. Clark, Brooklyn; Ronalds & Johnson Company, Brooklyn. 3

Q. Is that the same Ronalds & Johnson of Camden?

A. Yes. Frontier Water & Steam Supply Company, Buffalo, N. Y.; Central Plumbers Supply Company, New York City; F. N. DuBois & Company, New York City; Samuel Lederman, New York City; Mayor, Lane & Company, New York City; John A. Murray, New York City; Ronalds & Johnson Company, New York City. 4

Q. Is that the same Ronalds & Johnson twice mentioned?

A. Yes. Edward Smolke & Company, New York City; Columbus Brass Company, Columbus, O.; American Plumb-

1 ers Supply Company, Toledo, O.; Joseph F. Grosswiller Supply Company, Toledo, O.; Ohio Plumbers Supply Company, Toledo; Atlas Supply Company, Muskogee, Oklahoma; C. A. Blessing, Philadelphia; Bridgman Brothers, Philadelphia; Fleck Bros. Company, Philadelphia; Ford & Kendig Company, Philadelphia; Ronalds & Johnson Company—

Q. Is that the same Ronalds & Johnson?

A. Yes. Philadelphia Anchor Sanitary Company, Pittsburg; Bailey-Farrell Manufacturing Company, Pittsburg; Kelly & Jones Company, Pittsburg; Ford & Kendig Company, Scranton, Pennsylvania; O'Malley Manufacturing
2 Company, Scranton; Providence Plumbing Supply Company, Providence; Murphy Supply Company, Green Bay, Wis.; Hobbes Supply Company, Eau Claire, Wis.

Q. How many does that make in this book that have not signed? A. Forty-nine including 4 branches.

Q. Now, will you look at this book and state the number that have check marks opposite them, that is, the number that have signed these jobber's license agreements?

THE WITNESS: May I ask counsel a question about that first?

Mr. GROSVENOR: I don't see why you should con-
3 sult counsel. Just go ahead and count them.

A. My answer is 340 jobbers whose names appear in this book have executed a license agreement, this number being made up of firms who have branches in more than one city. These branches have been included in the number 340.

Q. That is to say some names may have appeared more than once, if they have more than one branch?

A. Yes, if the branches of the company were eliminated and all of the branches considered as one company, this number would be reduced.

4 Q. How much?

A. 61, leaving 279 in book who have signed.

Q. Now, I show you this list of names not in this Blue Book, being as you stated names of jobbers who also have entered into the license agreement with the manufacturers and ask you to state how many are on that list? A. 48.

Q. That makes in all how many jobbers that have entered into the license agreements? A. 388.

Q. Counting the branches, as you have stated? A. Yes.

Q. Now, how many jobbers are there named in the Blue Book who have not entered into a license agreement with any one of the manufacturers? A. Forty-nine. 1

Mr. GROSVENOR: I offer in evidence as "Exhibit No. 30" the Blue Book and the list of jobbers having signed but not in the Blue Book, attached thereto. The pencil marks in the Blue Book as explained by the witness to be made part of the exhibit.

Q. I now direct your attention to provision No. 10 in the jobber's license agreement, which is Exhibit No. 11, reading as follows: "10. The Purchaser also agrees during the life of this contract not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in Sanitary Enameled Iron Ware of any manufacturer not licensed under the Letters Patent enumerated herein, except with the express written permission of the Licensor. Breach of any of the provisions of this agreement, or any failure to maintain and observe prices, rules or regulations shall give the Company, or E. L. Wayman, owner of the Patents hereinbefore enumerated, an option immediately to cancel this contract, all unfilled orders, and to withhold all rebates; and the Purchaser is hereby expressly put on notice that in case of any such failure, he cannot thereafter obtain Sanitary Enameled Iron Ware manufactured under the Letters Patent above enumerated from any of the Licensed Manufacturers." When was that provision first considered? 2 3

A. That provision, part of it, the first part of it, with the exception of the last few lines appearing in paragraph 10 of this jobber's license agreement—three years ago when I first had the matter in mind the last two lines were considered by me the latter part of May, and I definitely decided to insert this provision in the jobber's license agreement about June 2. 4

Q. State once more what part was inserted on June 2, 1910. Just read the words, so that it will be plain.

A. I will amend my former answer to include this addition (reading) "or E. L. Wayman, owner of the Patents hereinbefore enumerated" and the provision (reading) "he cannot thereafter obtain Sanitary Enameled Iron Ware manufactured under the Letters Patent above enumerated from any of the licensed manufacturers."

Q. That is to say, the words which you have just read were inserted after May 6, 1910? A. Yes.

Q. I show you Petitioner's Exhibit No. 10, which is the form of jobber's license agreement which was issued by you to the various manufacturers on March 24. Is that correct?

A. Yes.

Q. You have stated that this form was considered by the various manufacturers who gathered in New York on March 29 and 30? A. In a general way.

Q. I direct your attention to paragraph 9 of that form made Exhibit 10, which reads as follows: "The Purchaser also agrees during the life of this contract not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in Sanitary Enameled Ware of any manufacturer not licensed under the Letters Patent enumerated herein, except with the express written permission of the Licensor. Breach of any of these provisions of this agreement, or any failure to maintain and observe prices, rules or regulations shall give the company the option immediately to cancel this contract and to withhold all rebates; and the Purchaser is hereby expressly put on notice that in case of any such failure he can thereafter obtain Sanitary Enameled Ware manufactured under the Letters Patent above enumerated only at resale prices, without any discount or rebate whatever." At the time of the March 30 meeting it was contemplated, then, was it not, that jobbers who signed the license agreement should be allowed to sell to jobbers who had not, but that the sale should be made at resale prices?

A. It was contemplated on my part.

Q. On your part? A. Yes.

Q. That was inserted in paragraph 9? A. Yes.

Q. Which became paragraph 10? A. Yes.

Q. That provision allowing a jobber to sell, but at resale prices, to jobbers who did not sign, was afterwards changed so that it now reads that jobbers who signed could not sell to jobbers who did not sign?

A. No, that is not correct.

Q. Well, state what is correct.

A. This refers to the manufacturers, and not from the jobbers to other jobbers. This refers to manufacturers to jobbers.

Mr. NOBLE: Is the witness referring to paragraph 10 of Petitioner's Exhibit 11? 1

THE WITNESS: Yes.

Q. Look at paragraph 10, please, that says "the Purchaser," does it not? A. Yes, and that is the jobber.

Q. (Reading): "The Purchaser also agrees during the life of this contract not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in Sanitary Enameled Iron Ware of any manufacturer not licensed under the Letters Patent enumerated herein, except with the express written permission of the Licensor." A. Yes.

Q. In case he did, what happened under the provisions of Section 10? 2

A. The manufacturer may cancel the contract or I may cancel the contract.

Q. Either? A. Yes.

Q. I will now ask you to look at Exhibit No. 9, which is the license agreement entered into by the licensed manufacturers with you, and direct your attention to the second paragraph of the paragraph numbered 6, which reads: "All terms and conditions relative to prices and discounts now established by the Licensor and set forth in the annexed schedules and made a part hereof, shall remain in force and effect," and so forth. Those annexed schedules were not produced with the original contracts, were they? 3

Mr. NOBLE: Do you mean yesterday?

Mr. GROSVENOR: Yes.

A. I am trying to grasp what you want.

Q. Well, what is meant by the term "annexed schedules and made a part hereof"?

A. The jobber's license agreement.

Q. And what else? A. That is all.

Q. And the resale price-list? 4

A. Yes, and the resale price list.

Q. In other words, the jobber's license agreement entered into by the manufacturers and the different jobbers, and the resale price list which the jobbers then follow in making their sales, are considered a part of this contract? A. Yes.

Q. That is of this Exhibit No. 9, being the license agreement between the manufacturers and you?

A. Yes, and also, it offers a latitude in this respect, that

1 it was not necessary for me to produce at that time the price-list, as all prices, conditions or regulations are subject to change automatically by the terms of the agreement.

Q. And they can be changed by the Commission and you? A. By me.

Q. With the Commission's consent? A. Yes.

Q. And not without the Commission's consent?

A. Conditions or regulations may be changed without the Commission's consent.

Q. Can prices be changed without the Commission's consent? A. No.

2 Q. Can discounts be changed without the Commission's consent? A. Not in so far as they relate to prices.

Q. Can the differentials of the different manufacturers be changed without the Commission's consent? A. No.

Q. At the time of the meeting, then, on May 6 in New York City, there were attached to these license agreements which were to be entered into between you and the manufacturers, and considered a part of those agreements, these proposed jobber's agreements with the proposed price list, although that price list had not yet been prepared in final form? A. Yes.

3 Q. Going back to the description of the business about which you testified yesterday, what material are most of the bathtubs made from—I mean, are they tin or sanitary iron ware or copper?

A. The principal component is cast iron.

Q. No, what kind of bathtub is sold most extensively in the United States? A. The tub known as the—

Q. No, is it the porcelain enameled tub, such as is manufactured by these manufacturers, or is it a tin tub or one made of copper? A. Porcelain enameled iron.

Q. That is, such as is made by these manufacturers?

A. Yes.

4

Q. Is that more durable than the tin? A. Yes.

Q. Is it less expensive than the porcelain? A. Yes.

Q. What is the average cost of the solid porcelain tub?

A. I should say from about $25 up to four or five hundred dollars.

Q. It is then a very expensive tub? A. Yes.

Q. Its use is comparatively infrequent as compared with the porcelain enameled tub? A. The use heretofore—

Mr. GROSVENOR: Just answer that question, please. 1

THE WITNESS: I want to answer it.

Mr. GROSVENOR: Read it again.

THE WITNESS: In my answer I want to explain what I mean.

The stenographer then read the last question.

A. The proportion is considerably smaller than that of the porcelain enameled iron tub.

Q. Of what other material are bathtubs made—tin?

A. Copper and—

Q. Tin? A. Yes. 2

Q. Are those very durable? A. No.

Q. They do not compare in service and durability with the porcelain enameled iron tub? A. No.

Q. Now, dealing with lavatories, most of the lavatories used in this country are made of what?

A. Solid porcelain, vitreous china or enameled iron.

Q. Of which is there the most extensive sale?

A. I believe enameled iron, but the sale of vitreous china and solid porcelain lavatories has greatly increased in the last few years.

Q. Which is the most expensive of those three kinds? 3

A. I don't know, I believe they are very close together in price; the solid porcelain, possibly, being a trifle higher.

Q. What is the material of which kitchen sinks are generally made? A. Cast iron or steel.

Q. Do you mean by cast iron the porcelain?

A. Yes, porcelain cast iron or porcelain steel, or solid porcelain.

Q. Will you please look at Petitioner's Exhibit No. 2, being the resolution of March 30, 1910, made Exhibit 1 of the petition; that refers to the appointment of that special committee, which you testified yesterday was elected by ballot at the meeting on March 30? A. Yes. 4

Q. Did you consider yourself a member of that committee? A. No, it was appointed—

Q. You met with the committee at Mount Clemens, Michigan? A. Yes.

Q. Were you present at their meetings? A. Yes.

Q. Did you participate in the discussion? A. Yes.

Q. Did you act as secretary of the meeting?

A. I kept minutes, memorandums.

1 Q. Did you retain a copy of those minutes? A. No.

Q. Did you make copies of the minutes?

A. I made them at the time.

Q. Did you preserve those copies? A. No.

Q. Have you any memorandum showing what was discussed at the meeting? A. No.

Q. Have you any letters to or from manufacturers stating what was being discussed at the meeting? A. Yes.

Q. Have you them now? A. No.

Q. Have you anything to show what transpired at the meeting? A. No, all I can recall is from memory.

2 Q. This resolution states "the Committee shall interview the various manufacturers, obtaining their consent as evidenced by their signatures to the above mentioned agreements." Did that committee interview various manufacturers? A. Several.

Q. Did you go with them? A. Yes.

Q. Whom did they interview?

A. Mr. F. G. Borden of the National Sanitary Manufacturing Company.

Q. Did you go with the committee at that time?

A. I was present at the interview.

Q. Who was present also? A. The full committee.

3 Q. Consisting of?

A. Mr. Hoelscher, Mr. Cline, Mr. Gates, Mr. Barnes and Mr. Torrance.

Q. Where was that meeting? A. At Mount Clemens.

Q. These various manufacturers, then, some of them, came to Mount Clemens to see the committee? A. Yes.

Q. Did they obtain Mr. Borden's agreement to go into the licensing plan?

A. They, in connection with myself, did, yes.

Q. He met you all together? A. Yes.

Q. And discussed the points of difference between him

4 and the committee?

A. I believe there were no points of difference between him and the committee.

Q. What did he go out for, then?

A. It was necessary to make some rearrangement of the schedules, as I explained before.

Q. Any discussion as to what preferentials should be allowed the National Sanitary Manufacturing Company?

A. As I remember it, I asked him if he would be satis-

fied with certain differentials and he said it was agreeable, 1
or words to that effect.

Q. Was the committee present when you asked him?

A. Yes.

Q. And he addressed his assent to the committee as well as to you? A. He addressed it to those assembled.

Q. Continuing with this Exhibit No. 2 introduced yesterday, it says: "And when the consent of 85 per cent. of the production is had, the agreements shall become binding and effective." That is 85 per cent. of the production of what? A. Of the principal companies in the business.

Q. In what business? 2

A. The Sanitary Enameled Iron Ware Business.

Q. That is when the consent of companies controlling 85 per cent. of the output of sanitary enameled iron ware was obtained? A. Approximately.

Q. Then the agreements should become binding and effective?

A. That is the wording of this, but that in effect was not carried out.

Q. In what respect?

A. Because when these license agreements were executed they did not represent 85 per cent. of the production, as near as I was able to estimate it. 3

Q. You mean when the license agreements were executed in May, on the 6th? A. Yes.

Q. What per cent. did they control? A. I don't know.

Q. You said as near as you estimated they did not control 85 per cent.? A. Yes.

Q. Then, what did they control?

A. From estimates made since, it amounts to about 80 per cent. of furnaces; that 80 per cent., however, does not represent production as far as volume of business is considered in dollars and cents.

Q. Now, I wish you would produce a list showing the 4
names of the corporation defendants, that is to say, the licensed manufacturers, the 16 of them, showing the number of furnaces owned by each and the number of furnaces operated by each during the period of this license agreement, as far as you can ascertain from the reports which those defendants have made to you?

A. I am having those reports prepared for you now.

Q. Thank you. Now, continuing with this exhibit:

"The Committee is authorized to levy a special assessment equal to the amount of one-quarter's dues as now paid into the association." What committee is meant there?

A. The committee representing the manufacturers.

Q. To be elected?

A. To be elected and to deal with me in working out the details of this license agreement.

Q. The dues referred to are dues in what association?

A. The Sanitary Enameled Ware Association; that expression there is simply used as a means of calculation.

Q. How many members were there of the Association at that time? A. Nineteen, as I recall.

Q. This sentence, then, contemplates that a levy should be made on each of the nineteen to pay the expenses of getting up this arrangement?

Mr. NOBLE: I object to that question. It seems to me the instrument speaks for itself on that point.

A. No.

Q. I will read the next sentence of the exhibit: "The proceeds of said special assessment to be used for the purpose of defraying the necessary expenses incurred in carrying into effect the object for which this convention was called." Now, was this levy made? A. Yes.

Q. To whom was it paid? A. To me.

Q. Did you use it? A. I used it for the committee.

Q. Of course, I meant for the committee. A. Yes.

Q. Did you draw upon it for your expenses at this time in going from city to city about this matter of license arrangement? A. No.

Q. Did you use it to pay any counsel fees? A. No.

Q. What was it used for?

A. Expenses of the committee exclusively.

Q. That is, the committee at Mount Clemens? A. Yes.

Q. That is to say these gentlemen, Mr. Torrance and Mr. Hoelscher and Mr. Cline and Gates and Barnes had their expenses at Mount Clemens paid out of this assessment? A. Yes, as representing the other manufacturers.

Q. All of the manufacturers? A. Yes.

Q. But none of it went to pay your expenses? A. No.

Q. You were at this time the Commissioner of the association referred to? A. Yes.

Q. You drew a salary as such Commissioner? A. Yes.

Q. How much was that salary? A. $4,000 per year. 1

Q. How was that salary paid? A. I paid myself.

Q. You do not understand my question: These 19 members were assessed certain dues? A. Yes.

Q. Wasn't your salary paid out of that sum which resulted from this assessment?

A. From the assessment as made, which applied to the regular business of the Sanitary Enameled Ware Association.

Q. Where did the $4,000 which was your salary come from? A. From the manufacturers.

Q. From each of these 19 manufacturers? 2

A. Yes, sir; in part.

Q. That is to say a part from each? A. Yes.

Q. Were you allowed traveling expenses? A. Yes.

Q. For what purposes?

A. For the purposes of visiting the manufacturers in the association.

Q. Well, when you went to see them about this licensing arrangement, did you pay always your own expenses?

A. I paid always my own expenses on anything connected with this licensing proposition. I conducted that as a separate matter. 3

Q. But the expenses of this committee at Mount Clemens, you have stated, were paid out of this special assessment? A. Yes.

Q. From the 19 members? A. Yes.

Q. I now direct your attention to Exhibit 4, which you will find in the petition as Exhibit 2, at page 26; that resolution was passed, you say, March 29? A. Yes.

Q. The day prior to the passing of the resolution referring to the price and schedule committee? A. Yes.

Q. That resolution says: "Whereas a proposition is pending for a license agreement and a resale price for the benefit of the jobbing trade," the license agreement referred to there, I take it, was the one about which there had been that March meeting—about March 2, I believe you said—at which you said you and Mr. Torrance were present? A. Yes. 4

Q. And the license agreement in respect to which you drew up the memorandum agreement? A. Yes.

Q. Made Exhibit 3? A. Yes.

Q. The resale price there mentioned has reference to

1 the system of resale prices subsequently adopted and embodied in the price list, and part of which is made Exhibit 11 of the petition? A. Yes.

Q. That exhibit continues: "Whereas long term contracts are a menace to said proposition;" what is meant by "long term contracts"? A. Any future delivery orders.

Q. "Are a menace to said proposition"; what proposition, the proposed license agreement?

A. The proposed license agreement.

Q. The resolution continues: "We, the undersigned, manufacturers of enameled ware, hereby agree to take no
2 orders for delivery beyond May 31, 1910. This agreement is not binding upon the signers unless all members of the Enameled Ware Manufacturers' Association are parties thereto and append their signatures." They then signed their names that day? A. Yes.

Q. One after the other? A. Yes.

Q. In the presence of each other?

A. Yes, all of which invalidates the whole matter, the very reading of it, and the signatures.

Q. What do you mean by that?

A. This says: "This agreement is not binding upon the signers unless all members of the Enameled Ware Manu-
3 facturers' Association are parties thereto and append their signatures."

Q. And some of them did not sign? A. No.

Q. So it was not binding? A. No.

Q. As a matter of fact, can you state that they did not live up to that resolution? A. Yes.

Q. Now, do you say they did not or did?

A. They did not entirely live up to that resolution.

Q. Who did not? A. All of them.

Q. Which ones? A. I should say all of them.

Q. In what respect did they not live up to it?

4 A. The fact that the orders they had on their books were orders which had been taken and could not be delivered by that time.

Q. You mean, then, the orders which they had on their books they carried out? A. Yes.

Q. I direct your attention to the third sentence of that resolution which says: "We, the undersigned, manufacturers of enameled ware, hereby agree to take no orders

for delivery beyond May 31, 1910." That does not refer to orders on the books? A. No. 1

Q. Do you still maintain that that resolution was not followed? A. Yes.

Q. In what respect?

A. In this respect, that orders that were taken subject to delivery—

Q. (Interrupting): Do you mean taken afterwards?

A. Taken afterwards, subject to delivery by May 31, were not carried out precisely owing to the fact that it was not possible for some of the jobbers to take the goods into their places and some were extended beyond the 31st. 2

Q. But all those orders on their books were for delivery prior to May 31?

A. Yes, and in so far as I know, none of the manufacturers have willingly extended the delivery of their orders beyond a reasonable time.

Q. Do you know of any one of the licensed manufacturers receiving or accepting, after March 30, 1910, any order for delivery beyond May 31, 1910?

A. Not positively.

Q. Do you think some of them did? A. Yes.

Q. Which? 3

A. That would be hardly fair to state, because I am not certain.

Q. As far as your information goes, then, they all observed that agreement?

A. That is not quite a fair question.

Q. Going back to that meeting of March 29 and 30, was any attorney present at either meeting? A. Yes.

Q. At which meeting? A. March 29.

Q. What attorney? A. Mr. Jackson.

Q. Give his full name?

A. Edwin E. Jackson, of Noble, Jackson & Hubbard, New York City. 4

Q. Were all the manufacturers present?

A. Most of them were.

Q. Did he make an address or talk to them on the subject of this license agreement? A. Yes.

Q. He went over the details with them? A. Yes.

Q. For what purpose?

A. For the purpose of emphasizing what I had said to them. I asked him to come there.

1 Q. You had been to these several manufacturers, or many of them, suggesting the licensing arrangement to them? A. Yes.

Q. Had some of them intimated to you or stated to you that in their opinion such an arrangement was unlawful?

A. In so far as their State laws were concerned.

Q. They thought it might be illegal? A. Yes.

Q. Had any of them suggested that it might be contrary to the terms of the Sherman Anti-Trust Act? A. Yes.

Q. Was the purpose of Mr. Jackson's address to show them that it was not in violation of the Sherman Act?

A. No.

2 Q. Did he touch on the legal aspects of the case?

A. Yes.

Q. Did he say that it was perfectly lawful? A. Yes.

Mr. GROSVENOR: I will ask you to produce the original copy of Exhibit No. 4 in the petition, it being a letter dated April 16, 1910, with the name Edwin L. Wayman, 1309 Arrott Building, Pittsburg, April 16, 1910.

Mr. NOBLE: We haven't the original copy of that, Mr. Grosvenor, but Mr. Wayman informs us that

3 the copy in the petition, as he remembers it, is correct.

Mr. GROSVENOR: All right.

Q. I show you a paper and ask you if this paper, without the pencil marks, is a copy of Exhibit 4 of the petition?

A. I believe that is correct.

Mr. GROSVENOR: I offer in evidence, as "Petitioner's Exhibit No. 31," a paper consisting of three typewritten sheets, the first two being the letter, and the third sheet being a page beginning "The following 'preferential discounts' from the selling prices

4 established by the Licensor will be allowed the various manufacturers on sales to jobbers only." Then follows the list of discounts.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 31."

Q. This Petitioner's Exhibit No. 31 was a circular letter issued by you to the various manufacturers of sanitary enameled iron ware, am I correct? A. Yes.

Q. You sent copies of it to all the manufacturers of sanitary enameled iron ware? 1

A. In so far as I remember.

Q. You sent copies to Kohler, Blairsville, Iron City, Clymer and Lipp? A. No.

Q. To the first four? A. With the exception of Lipp.

Q. You did send them to the others?

A. Yes, I think so.

Q. You sent it then to all the manufacturers named on the third page of the exhibit in the column of names of manufacturers?

A. Yes, on page 34 of the petition.

Q. Is that right? A. Yes. 2

Q. This letter was issued on the date stated on the letter, April 16? A. I presume it was, yes.

Q. I will read parts of that exhibit (reading): "The price and schedule committee created at the meeting held in New York City, for the purpose of concluding the license and resale agreements, have just completed a special session held at Mount Clemens, Michigan, beginning April 8, and ending April 14"; that is the committee meeting to which we have referred so often? A. Yes.

Q. The dates there given are accurate for the dates of the meeting? 3

A. I am not sure about that, but they are approximately correct.

Q. (Continuing): "All the details of the license agreement and jobber's agreement were thoroughly gone into and considered, every paragraph being carefully weighed; the committee making such additions or eliminations as they considered advisable." The committee referred to there consisted of Mr. Torrance, Mr. Hoelscher, Mr. Gates, Mr. Barnes and Mr. Cline? A. Yes.

Q. (Continuing): "Some changes were made in the arrangement of the schedules as you will note by the attached copy as well as some changes in the differentials." By the differentials you mean the special discounts you allowed certain manufacturers to make? A. Yes. 4

Q. Those differentials are also enumerated at the end of the exhibit and printed on page 34 of the petition? A. Yes

Q. (Continuing): "All members"—members of what?

A. That refers to the manufacturers.

Q. (Continuing): "All members who had suggestions

1 to make or those whom the committee desired to see, appeared before them"; now, what manufacturers appeared before the committee?

A. Mr. F. G. Borden of the National Sanitary Manufacturing Company; Mr. Anton Weiskittel of A. Weiskittel & Son Company; Mr. A. G. Ward of the Day-Ward Company; Mr. C. E. Gates of the Union Sanitary Manufacturing Company; Mr. Kenney, of the Humphryes Manufacturing Company. That is all I recall.

Examination Suspended.

2

At this point the hearing was adjourned until 1:45 p. m.

After Recess.

EDWIN L. WAYMAN, resumed the stand for continuation of direct examination, and testified as follows:

DIRECT EXAMINATION BY MR. GROSVENOR (continued):

I will continue with Exhibit No. 31, which is Exhibit 4 of the petition. (Reading): "All members who had sug-
3 gestions to make or those whom the committee desired to see, appeared before them, and after going into all details and bringing up every possible question they went away entirely satisfied after having presented the committee with letters, several of which are given below." The next paragraph, I take it, is taken from a letter received by you or the committee from one of these manufacturers who had attended?

A. Yes, the next two paragraphs—these two paragraphs quoted here (indicating) I noticed were presented to the committee through error, and I called attention to that
4 after I had noticed it, and the agreements that were made should have been made with me, and most of them were. I believe through error one or two of these agreements were addressed to the chairman of the committee or the committee. The balance of them, as soon as I noticed it, were addressed to me.

Q. Who drew up the letters referred to?

A. Why, the party dictating that letter.

Q. I show you a paper purporting to be a letter dated

April 11, 1910, on the letterhead of the Colonial Hotel, 1
Mount Clemens, Michigan, signed "The Day-Ward Company, by A. G. Ward, V. P.," and ask you if that is a letter written at the time? A. Yes.

Q. That is addressed to H. M. Hoelscher, chairman?

A. Yes, sir; that is what I say; that was addressed to him but should have been addressed to me, as the agreement was with me.

Q. I will read this letter: "Mr. H. M. Hoelscher, chairman, Colonial Hotel, Mount Clemens, Michigan. April 11, 1910, My dear Sir: After having met with the committee and gone into the matter very carefully, we have given it 2
due consideration and in the matter of harmony we will waive all demands which we made in our previous letter as to schedule, and will agree to manufacture all ware which we make under one of the three dredger patents, and we will also agree to the schedule of differentials in prices as submitted by your committee, and trust that our action will enable you to harmonize other interests." That part "and we will also agree to the schedule of differentials" refers to the differentials allowed to the different manufacturers?

A. No, to the differentials allowed to his company.

Q. What does he mean by saying: "to harmonize other 3
interests."

THE WITNESS: Whose letter are you reading there?

Mr. GROSVENOR: This is Mr. Ward's letter.

A. Why, as near as I can recall, he wanted larger differentials than he finally agreed to accept.

Q. You mean special discounts which he could allow below the Standard Sanitary prices?

A. No, below whatever regular prices might be allowed.

Q. And he wanted to be allowed to make a larger differential? A. Yes. 4

Q. Now go on.

Q. What he meant, as I take it, was that he hoped that his action would aid or assist in harmonizing other interests, that is, that it would undoubtedly convince other manufacturers that they should not ask for larger differentials than they were really entitled to.

Q. That is, if he accepted a lower differential he hoped it would persuade others to accept a lower differential, is that it? A. Yes, sir.

1 Q. There was, then, a discussion at this meeting as to what differentials should be allowed the different manufacturers? A. Yes.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 32."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 32."

Q. I show you another letter on the letterhead of the same hotel addressed to Mr. Hoelscher and signed "C. E. Gates, V. P. and Mngr., Union Sanitary Manufacturing
2 Company, Noblesville, Indiana," and ask you if that was a letter presented at the same time? A. Yes.

Q. Had there been a discussion with the Union Sanitary Manufacturing Company as represented by Mr. C. E. Gates as to what differential should be allowed that company?

A. As I recall Mr. Gates' visit, there was practically no discussion; he thought the differentials were about right for his company.

Q. Did he go over the matter before the committee?

A. Not in detail.

Q. At all these committee meetings you were present?
3 A. Yes, sir.

Mr. GROSVENOR: I offer this letter in evidence as "Petitioner's Exhibit No. 33."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 33."

It reads as follows:

"April Eleventh, Nineteen ten.

Mr. H. M. Hoelscher, Chairman,
Colonial Hotel,
4 Mt. Clemens, Mich.

My dear sir:—

After meeting with your Committee and having gone over in detail all of the matters under consideration, we hereby agree to manufacture all our ware under the standard Dredger patents, and also agree

to the schedule of differentials in prices as submitted to me by your Committee. 1

Very truly yours,
C. E. Gates, V. P. & Mngr.
Union Sanitary Mfg. Co.
Noblesville, Ind."

Q. I show you another letter on the letterhead of the same hotel, addressed to Mr. H. M. Hoelscher, Chairman, dated April 12, 1910, and signed "National Sanitary Manufacturing Company, F. G. Borden, President." I ask you if that letter was presented to the committee on the date indicated? A. Yes, sir. 2

Q. Had that company as represented by Mr. Borden discussed the subject of differentials with the committee?

A. I do not recall, but if at all, very little, because Mr. Borden—as I remember it—was perfectly satisfied with the differential as presented.

Mr. GROSVENOR: I offer in evidence the letter dated April 12, just referred to, as "Petitioner's Exhibit No. 34."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 34." 3

It reads as follows:

"April Twelfth, Nineteen Ten.

Mr. H. M. Hoelscher, Chairman,
Colonial Hotel,
Mt. Clemens, Mich.

Dear sir:—

The meeting with your Price and Schedule Committee has been entirely satisfactory to the National Sanitary Company, we agreeing to the Schedule of differentials as presented, also to work under the Standard Dredger Patents. 4

We also wish to compliment the Committee on the progress made and fully hope that the Meeting will close at an early date with your efforts appreciated by all and a satisfactory ending.

Yours very truly,
National Sanitary Mfg. Co.
F. G. Borden, Pres."

Q. I show you a letter on the letterhead of the Colonial Hotel to Mr. E. L. Wayman, under date of April 12, 1910, and signed by the Humphryes Manufacturing Company, by H. D. Kenney. That letter is on the letterhead of Edwin L. Wayman, but it is headed, "Colonial Hotel," and I ask you if that was also presented on the date indicated?

A. Yes, sir.

Mr. GROSVENOR: I offer that letter as "Petitioner's Exhibit No. 35."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 35."

It reads as follows:

"Colonial Hotel,
Mt. Clemens, Mich.

April 12th, 1910.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir:—

We hereby accept your proposition as to a License Agreement under U. S. Patent No. 633,941, granted to James Arrott Sept. 26th, 1899, by which we are permitted to use said Patent and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation; less such rebate that you may hereafter decide upon; it being understood that all Licenses shall be upon the same uniform schedule of Prices per furnace and the same uniform charge and rebate.

We further agree to maintain any and all stipulations and provisions set forth in the Schedules and also to the differentials established for our Company as shown in the attached sheet.

(signed) Humphryes Mfg. Co.
By H. D. Kenney."

Q. I show you another letter dated April 13, 1910, on the letterhead of the Colonial Hotel, addressed to you and signed by A. Weiskittel & Son Company, by Anton Weiskittel, and ask you if that letter was presented on the day indicated? A. Yes, sir.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 36." 1

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 36."

It reads as follows:

"April thirteenth, Nineteen Ten.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

We hereby accept your proposition as to a License Agreement under Dredger Patents by which we are permitted to use said Patents and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebate that you may hereafter decide upon; it being understood that all Licenses shall be upon the same uniform schedule of prices per furnace and the same uniform charge and rebate. 2

We further agree to maintain any and all stipulations and provisions set forth in the Schedules and also to the differentials established for our Company as shown in the attached sheet. 3

(signed) A. W. Weiskittel & Son Co.
By Anton Weiskittel."

Q. I show you four letters written on the letterheads of E. L. Wayman, 1509 Arrott Building, Pittsburg, and addressed to you, three of which are dated April 19, and one April 21, and they are signed respectively by the Wheeling Enameled Iron Company, by J. E. Wright, President; McVay & Walker per A. C. Walker; Kerner Manufacturing Company, H. J. Frauenheim, and J. L. Mott Iron Works, E. Hammann, and ask you if those were presented to you on the dates indicated? A. Yes. 4

Q. And those are the signatures of the companies or individuals whose names appear thereon? A. Yes.

Mr. GROSVENOR: I offer those in evidence as "Petitioner's Exhibits Nos. 37, 38, 39 and 40 respectively.

The letters referred to were then marked and filed

1 as "Petitioner's Exhibits Nos. 37, 38, 39 and 40" respectively.

Q. Did any of these gentlemen appear before the committee?

A. The Kerner Manufacturing Company, McVay & Walker, the Wheeling Enameled Iron Company appeared before part of the committee in Pittsburg on the dates indicated.

Q. Did they appear by the individuals who signed these several letters? A. Yes.

Q. Now, taking up that special meeting at Pittsburg,
2 who was present for the committee at that meeting?

A. As I recall, A. H. Cline, jr., of the United States Sanitary Manufacturing Company; Francis J. Torrance of the Standard Sanitary Manufacturing Company, and I think, T. R. Barnes of the Barnes Manufacturing Company, but I am not positive about the last party.

Q. The other members of the committee were absent?

A. They were not there.

Q. Where was the meeting held? A. In my office.

Q. Where did E. Hammann sign on April 21?

A. At the Manhattan Hotel.

3 Q. Did he appear before the committee there?

A. Before part of the committee.

Q. Who constituted part of the committee?

A. As I remember—I am not positive about this—

Q. State to the best of your recollection.

A. To the best of my recollection there was Mr. Gates, of the McCrum-Howell Company and Mr. Cline of the United States Sanitary Manufacturing Company; that is all I remember being there.

Q. Returning again to the Exhibit No. 31, it being the circular letter attached to the petition as Exhibit 4, and
4 issued by you on April 16, I will read the last paragraph: "The committee will hold additional meetings Tuesday, April 19, at Pittsburg, and Thursday, April 21, at New York City, which meetings it is believed will finish all the preliminaries." Those are the meetings to which you have just referred, are they not? A. Yes.

Q. At which these other letters were presented? A. Yes.

Q. (Reading): "You may, therefore, expect to receive a notice calling a general meeting to be held in New York

City during the first week in May for the purpose of executing the final license agreement papers, which will put this and the resale proposition into effect on June 1, which date is being expected and insisted upon by the jobbers throughout the country. The papers you will be asked to sign at this meeting will not be subject to any further changes." At that time, then, that is on April 16, the licensing arrangement had been practically determined upon? 1

A. The manufacturer's license agreement.

Q. Had been determined upon?

A. Yes, that is, the wording of it.

Q. (Continuing): "They embrace the best suggestions made to the committee, have been passed on by the best legal talent in the country and it will not be feasible to make any additional changes in order to meet the ideas of the attorneys of the individual companies. Will you, therefore, come prepared to sign or bring such principals with you that have authority to conclude the matter?" And then follow the preferential discounts to be allowed the various manufacturers on sales to jobbers only. The last sentence of that which appears in the circular letter is underlined and reads as follows: "All makes of goods shall be sold to the plumber at the resale prices that may be established in the sheets." That refers to the sales by the jobber to the plumber? A. Yes. 2 3

Q. The plumber is known in the trade as the last distributor before the user? A. Yes.

Q. The plumber puts the article in the house? A. Yes.

Q. The jobber sells to the plumber? A. Yes.

Q. The resale prices are those which were to be set out in the price list? A. Yes.

Q. Which you were to issue? A. Yes.

Q. This price list which Mr. Noble has handed to me is the price list which is now in force? A. Yes. 4

Q. Will you kindly produce a copy of this that I may offer it in evidence? A. Yes.

Q. There have been changes made in this since it first went into effect on June 1, is that right? A. Yes.

Q. I show you a book entitled "Price List, Edwin L. Wayman, Pittsburg." Is that the price list which was first enforced?

A. I should say it was, without examining it closely.

Q. Well, please examine it.

A. That is, as far as I can identify it, correct. I will say that all sheets dated June 1 are those that were in effect at that time.

Q. Well, just look through this and see if there are any sheets not dated June 1 or which do not belong to it.

A. I should say that was it.

Q. Will you look at Exhibit 10 of the petition and state whether that Exhibit No. 10 is taken from the first pages of this price list.

A. I would say that the information contained on the first page of the price list is similar to that contained in Exhibit No. 10 shown on page 57 of the petition.

Q. This price list, Mr. Wayman, is the price list which we have previously referred to and is considered a part of the general licensing arrangement which the manufacturers and jobbers are to observe? A. Yes.

Q. It is a part of the papers referred to in the manufacturer's license agreement with you? A. Yes.

Q. And also the prices referred to in the jobber's license agreement? A. Yes.

Q. This price list is whose property? A. My property.

Q. This price list is used by all the jobbers whose names appear as checked in this Blue Book, Exhibit No. 30, and on the list attached thereto, is it not?

A. Yes, and in addition by the manufacturers and jobbers whose names are not checked.

Q. I will read from that "To licensed jobbers' salesmen: June 1, 1910. This price list is the property of E. L. Wayman, Arrott Building, Pittsburg, and is loaned to you with the understanding that it is subject to recall at any time. The prices given herein are the selling prices I have established to plumbers on sanitary enameled iron ware manufactured by the following companies, operating under patents owned by me and to whom I have granted licenses." When you say, "are the selling prices I have established to plumbers" you mean they are the selling prices which the jobbers are to quote to customers? A. Yes.

Q. Then follow the names of the 16 manufacturers who made the arrangement with you; then follows "it is necessary for all licensed manufacturers to sell their product manufactured in accordance with these patents on the terms herein established"; this was a letter addressed to the licensed jobbers' salesmen, was it not? A. Yes.

Q. And contains the instructions which they are to follow in observing the agreements of the jobbers with the manufacturers? A. Yes. 1

Q. (Continuing): "And you are hereby notified that the license agreements executed by your company obligates it to resell the various license products at no better prices, terms or other regulations than herein established. As changes, additions or eliminations occur, new sheets will be issued promptly." By that you mean changes in prices, do you not?

A. Changes in prices or changes in grouping or goods on which there were not established prices. 2

Q. By that do you mean new shapes or forms?

A. No, goods being manufactured at the time but on which I had not placed any price; or by "eliminations" is meant should I remove the selling conditions on any particular article or eliminate that article from the market.

Q. This is all in pursuance to the conditions contained in the jobber's license agreement and the manufacturer's license agreement?

THE WITNESS: I don't understand that.

Q. These changes could be made only in accordance with the terms of those two printed contracts which we have already produced in evidence, the manufacturer's license agreement and the jobber's license agreement? 3

A. Yes, those agreements provide for changes from time to time.

Q. These changes can only be made as provided in those agreements?

A. Some of these changes can be made only under the provisions named in the license agreements; other changes can be made at my option.

Q. Referring to the license agreements, Exhibit No. 9, which provides in paragraph 6, in the second section, "all terms and conditions relative to prices and discounts now established by the Licensor and set forth in the annexed schedules and made a part hereof, shall remain in force and effect until other terms, conditions and preferential discounts are substituted therefor by the Licensor, which substitution can only be made by him with the approval of a majority of the members of the Commission, hereinbefore prescribed." Now, in this price list, any change in 4

1 price which is made would go out on a new sheet? A. Yes.

Q. Which you issue to the different jobbers? A. Yes.

Q. That change in price has to be made, as provided in this manufacturer's agreement, with the approval of the majority of the Commission?

A. In answering that I wish to say that I have interpreted that paragraph very liberally. Possibly 95 per cent. of the changes I have made I have not consulted the Commission at all. Most of the changes in prices were due to errors, either in figuring, compiling or grouping the various products.

2 Q. The changes, then, so far made, have been comparatively unimportant? A. Well, yes.

Q. That is, since June 1? A. Yes.

Q. Any radical changes in prices could you enforce without the approval of the committee?

A. I probably could, but I have not done so.

Q. You have not done so? A. No.

Mr. GROSVENOR: I offer in evidence this price list containing 276 printed pages and entitled, "Price List, Edwin L. Wayman, Pittsburg, Licensed Sanitary Enameled Iron Ware, June 1, 1910," as "Petitioner's Exhibit No. 41."

3 Price list referred to was then marked and filed as "Petitioner's Exhibit No. 41."

Q. Now, in Exhibit 41 on page 2 of the white pages there are stated certain general conditions; those are general conditions which govern the jobbers in their sales to plumbers, is that right?

A. And manufacturers in sales to jobbers.

Q. That is, they govern the disposition of the bathtub from the time it leaves the manufacturer until it comes into the possession of the plumber, is that right? A. Yes, sir.

4 Q. I will read this sentence: "The ware covered by the price sheets shall be invoiced by individual items, fixtures to be billed separately (less all fittings) and it is not permissible to bill collectively several articles in a 'lump sum.'" Give me a concrete instance of what that means. Supposing a jobber sells to a plumber bathtubs, kitchen sinks, lavatories and these other articles, slop sinks, &c., now apply this rule here to the jobber in making out his

bill or to the manufacturer in making out his bill? A. Yes. 1

Q. How must the bill be made?

A. Cover the enameled ware and such permanent fixtures as go with the enameled ware, as usually furnished by the manufacturer as a part of the fixture itself.

Q. What does that mean "shall be invoiced by individual items"?

A. That means the bathtubs shall be invoiced at the price of the bathtubs.

Q. On the bill? A. Yes.

Q. And the kitchen sinks the same way? A. Yes, sir.

Q. That is every article must be itemized on the bill 2
separately, is that it? A. Yes.

Q. That governs the sale from the manufacturer to the jobber?

A. Yes, and from the jobber to the plumber.

Q. What is the purpose of that, to assist you and your auditors?

A. This price list covers enameled ware and is not intended to include such articles as supply pipes or stop cocks, &c.

Q. What is the purpose of separating in lump sums the bathtubs and kitchen sinks and lavatories—that is what 3
I want to get at—is that to enable you and your auditors to determine the number of bathtubs sold and whether the resale prices have been observed? A. Yes.

Q. In respect to bathtubs, kitchen sinks and all these other articles? A. Yes, either to jobbers or plumbers.

Q. I read on the same page "Goods shall be sold at prices established and prevailing in the various zones into which the goods are shipped, regardless of the point of purchase"; what does that mean?

A. That means if goods are purchased, for instance, in Pittsburg— 4

Q. Which is in Zone what? A. Zone 1.

Q. By whom?

A. By a jobber, and shipped, for instance, to Kansas City—

Q. Which is in what zone?

A. In Zone 3, that the goods shall be invoiced at the prices named for Kansas City.

Q. That is for Zone 3?

A. Yes, for Zone 3, and not at the prices named for Pittsburg, which is in Zone 1.

Q. Said prices being established for the separate zones in this price list (indicating)? A. Yes.

Q. I direct your attention to the page numbered 4 in the white sheets and the foot-note thereof "Goods must be sold to the plumber at the quantity prices established in the sheets;" what does that mean?

A. That clause was inserted for the reason—

Mr. GROSVENOR: Just say what it means and give the reason later.

A. The reason will explain what it means. It was done for the reason that I thought possibly that the jobbers being enabled to buy in any quantity at carload prices at the cities named on this sheet might through error resell to the plumbers at the carload prices.

Q. And does that prevent it? A. Yes.

Q. Let me understand this: Is it not right that the jobber buys from the manufacturer at carload prices always? A. No.

Q. Under these contracts A. No.

Q. Is he not allowed carload prices to jobbing points? A. No, not unless he buys in carloads.

Q. I direct your attention now to pages 16 to 18 of the white pages of that price list. Page 16 is headed "Special Drillings," and then there is a schedule of prices for special drillings. That page gives the charge or states the charge which each manufacturer and jobber must impose for those drillings; isn't that right? A. Yes.

Q. And that is the same for all these licensed manufacturers? A. Yes.

Q. And that is done on the article sold before it leaves the manufacturer, generally, is it not? A. Yes.

Q. On page 18 there are certain boxing and freighting charges. Those are established uniformly for the 16 manufacturers, is that right? A. Yes.

Q. And for all the jobbers who signed the contract? A. Yes.

Q. Are they allowed to vary from those rules? A. No.

Q. Those charges are established in detail for all the different articles which are sold under this price list? A. Yes.

Q. And those charges form some of the conditions which 1
are part of the licensing arrangement? A. Yes.

Q. I show you a typewritten letter on which the heading is "Edwin L. Wayman, Arrott Building, Pittsburg, May 28, 1910" addressed to the jobbing trade, and ask you if you drew that up? A. Yes.

Q. That is a copy of the letter which you intended sending out, and before sending it out you issued this copy, being a proposed draft, to the different manufacturers?

A. No, I sent that to the jobbers?

Q. You sent that to all the jobbers?

A. Yes, as far as I knew of. 2

Q. To what jobbers did you send it, all those in the list we had today?

A. All those in the Blue Book. I knew of no other jobbers.

Q. You did not know of any others except those in the Blue Book? A. That is right.

Q. And to all of those you sent this paper?

A. Yes, sir.

Mr. GROSVENOR: I offer the letter in evidence as "Petitioner's Exhibit No. 42."

The letter referred to was then marked and filed 3
as "Petitioner's Exhibit No. 42."

Q. I show you a letter headed "Edwin L. Wayman, Arrott Building, Pittsburg, May 31, 1910," addressed to the jobbing trade; is that a copy of a letter issued by you on the date indicated? A. Yes.

Q. And that was issued to the same jobbers as the letter of May 28? A. Yes.

Q. Now, this refers to a letter of May 19? A. Yes.

Q. Have you a copy of that letter? A. I think I have.

Mr. GROSVENOR: I offer this letter of May 31 in 4
evidence as "Petitioner's Exhibit No. 43."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 43."

Q. Now I show you a letter on your letterhead, and signed by you, dated May 19 and addressed to the jobbing trade. Is that (indicating) a copy of the letter issued by you? A. Yes, sir.

1 Q. And that was sent to the same jobbers as the other two letters? A. Yes, sir.

Q. You don't know of any other jobbers? A. No.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 44."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 44."

Q. I show you another letter dated June 3, 1910, on your letterhead, signed by you, or with your name, and ask if that is a copy of a letter issued by you?

2 A. Yes, that is Exhibit 11 in the petition.

Mr. GROSVENOR: I offer that in evidence without the pencil notations, as "Petitioner's Exhibit No. 45."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 45."

Q. This letter of June 3 was issued in the same way as the others? A. Yes, sir.

Q. To the same jobbers? A. Yes.

Q. And to no others? A. No.

Q. Because you knew of no others?

3 A. Yes; each of these letters also went to the manufacturers.

Q. In each case? A. Yes.

Q. And were these letters furnished to the unlicensed manufacturers also?

A. Yes, I believe I furnished these to the unlicensed manufacturers also.

Q. I direct your attention to the last exhibit, No. 45, which is the letter of June 3, 1910, and call your attention to the paragraph on the second page headed "Distribution and Resale of Licensed Sanitary Enameled Iron Ware." That paragraph reads: "To purchase Licensed Sanitary

4 Enameled Iron Ware, during the period beginning June 6th and ending Dec. 31st, 1910, it is necessary for you to execute a Jobber's License Agreement Contract, sample of which is attached, with each of the Licensed Manufacturers with whom you may desire to deal. Copies for signature will be sent you in duplicate by each of the Licensed Manufacturers, the execution of which makes you a Licensed Distributor of Sanitary Enameled Iron Ware. Licensed Ware cannot be sold to you, if you have not ex-

ecuted these Contracts." By that paragraph you refer, do you not, to the provisions of the licensed manufacturers' agreement and the provisons contained in the licensed jobbers' agreements? 1

A. That refers, in so far as those agreements are concerned, to paragraph 9 of the jobber's license agreement, wherein it is provided that such rules and regulations are in force until other rules and regulations may be substituted therefor by the licensor.

Q. I show you a typewritten sheet and ask if that is a copy of the general letter issued by you to the several licensed manufacturers prior to the issuance by them of the forms of license contracts to jobbers? A. Yes. 2

Q. That is Exhibit 12 of the petition, is it not? A. Yes.

Mr. Grosvenor: I offer that in evidence as "Petitioner's Exhibit No. 46."

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 46."

Q. What time did you send that letter out to the different manufacturers?

A. It was either the latter part of May or near the first of June, I have forgotten which.

Q. Just a few days before they were allowed to send out the licensed jobber's contracts? 3

A. Before I furnished them to them to be sent out.

Q. Now, Mr. Wayman, you stated yesterday that you had some correspondence with Mr. Kohler of the J. M. Kohler Sons Company, of Sheboygan, Wisconsin, with reference to going into this licensing arrangement? A. Yes.

Q. But you returned those letters to him? A. Yes.

Q. I show you a typewritten sheet dated May 25, 1910, addressed to Mr. F. J. Torrance of the Standard Sanitary Manufacturing Company, and purporting to be signed by you, and I ask you if that is the letter sent by you to Mr. Torrance on that day? A. Yes. 4

Q. That is a copy of Exhibit No. 12 to the petition?

A. Yes.

Q. Will you look at that pencil notation? A. Yes.

Q. Do you recognize that? A. Yes.

Q. Whose is it? A. Mr. Torrance's.

Q. Who is Mr. Gregg?

A. He is advertising manager of the Standard Sanitary Manufacturing Company, has charge of all printing, &c.

Mr. GROSVENOR: I offer that in evidence, with the pencil notation of Mr. Torrance, which was identified by the witness, as "Petitioner's Exhibit No. 47."

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 47."

Q. You are familiar with the handwriting of Mr. Torrance? A. Yes, usually.

Q. And you take that to be his? A. Yes.

Q. I introduced in evidence yesterday a copy of a letter dated February 7 and addressed by you to Mr. Walter J. Kohler, in which you referred to the informal discussion at the meeting of February 1. Do you recall that?

A. That is not quite the correct statement.

Q. Do you recall this exhibit (indicating)? A. Yes.

Q. Do you recall your testimony yesterday about that exhibit? A. Yes.

Q. Well, do you recall receiving a reply from Mr. Kohler to that letter? A. Yes.

Q. Will you look at this letter and see if that is a copy? A. Yes, it is.

Mr. GROSVENOR: I offer this letter dated February 10, 1910, addressed to E. L. Wayman, Pittsburg, Pennsylvania, in evidence, as "Petitioner's Exhibit No. 48."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 48."

Q. (Reading): "Mr. E. L. Wayman, Pittsburg, Pa., Dear Sir: Acknowledging yours of the 7th regarding resale price and license arrangement. We are not prepared to state, today, that we would enter into a license arrangement, and consequently are not sending you a list of our patents. As you know, we are opposed to price agreements, but we are interested in anything which pertains to the betterment of business conditions, and if anything develops along the line you have in mind, we are satisfied at any and all times to market our output at prices equal to those of the Standard Sanitary Manufacturing Company. Very truly yours, J. M. Kohler Sons Company, per (blank)

President." Now, you addressed a letter to Mr. Kohler in reply to that? A. I think I did. 1

Q. Let me show you this letter of February 12, addressed to Walter J. Kohler, President, purporting to be signed by you, and ask you if that was addressed by you to him on the date indicated? A. Yes.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 49."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 49."

Mr. GROSVENOR: I will read it: "Walter J. Kohler, President, J. M. Kohler Sons Company, Sheboygan, Wisconsin. Dear Sir: I am pleased to acknowledge receipt of your letter of the 10th with reference to resale prices and license agreement. I do not know how this matter is going to work out, but your letter leads me to believe that if something along these lines can be worked out that will be legitimate and worth while, that I can count on your co-operation." 2

Q. Now, you received a letter in reply to that letter of yours, Mr. Wayman?

A. I remember such a letter; I would say that is correct. 3

Mr. GROSVENOR: I offer the letter in evidence, it being dated February 14, 1910, addressed to Mr. E. L. Wayman and signed by J. M. Kohler Sons Company, as "Petitioner's Exhibit No. 50."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 50."

Mr. GROSVENOR: I will read this letter of February 14, 1910:

"Feb., 14, 1910.

"Mr. E. L. Wayman, 4
Pittsburg, Pa.

"Dear Sir:—

"Resale Price and License Arrangement.

"Answering yours of the 12th. As you know from repeated conferences and some correspondence had with us, we are not very enthusiastic about the license arrangement and will not commit ourselves,

1 at present, to the statement that we will join if it is formed. In our letter of the 14th we intimated that if a license arrangement was worked out and we decided, at that time, to become parties to this agreement, or to co-operate as outsiders, that we would, in that event, be satisfied to sell our goods on the same basis as the Standard Sanitary Mfg. Company.

"Yours very truly,

"J. M. Kohler Sons Co.,

per

"WJK-W Pres."

2 Q. Now, you testified yesterday, Mr. Wayman, in respect to a meeting at Chicago on the second of March?

A. Yes.

Q. After which you drew up that memorandum of agreement? A. Yes.

Q. You testified that Mr. Kohler was present? A. Yes.

Q. I show you a letter dated February 25, 1910, and addressed to Mr. W. J. Kohler, and purporting to be signed by you, and ask you if that is a copy of the letter addressed by you to him on the date indicated?

A. I recall a letter of that nature, and I presume that
3 is the letter which resulted in my meeting those people in Chicago on March 2.

Q. You recall writing to him about that time? A. Yes.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 51."

The letter referred to was here marked and filed as "Petitioner's Exhibit No. 51."

Mr. GROSVENOR: I will read that letter:

"February 25, 1910.

"Mr. W. J. Kohler,
c/o J. M. Kohler Sons Co.,
4 Sheboygan, Wis.

"Dear Sir:

"Can you attend a meeting next Wednesday morning at Chicago of the companies to whom this letter is addressed for the purpose of trying to arrive at some definite recommendations to be made to the special meeting of all the companies, which is to be called the first part of next month at New York

regarding licenses and resale prices? The market conditions are such that this matter ought to be settled without further delay, and I would thank you to telegraph me not later than Monday if you can attend. 1

Yours very truly,
"E. L. Wayman, Commissioner.

"Copies to:

H. M. Hoelscher,	L. Wolff Mfg. Co.
F. J. Torrance,	Standard Sanitary Mfg. Co.
A. H. Cline, Jr.,	U. S. Sanitary Mfg. Co.
W. J. Kohler,	J. M. Kohler Sons Co.
H. T. Gates,	McCrum-Howell Co.
J. B. Murphy,	J. M. Kohler Sons Co."

2

Q. According to the plans stated in the letter, there was that meeting in Chicago? A. Yes.

Q. And the persons to whom these letters were addressed were there present? A. Yes.

Q. Now, you received a telegram from Mr. Kohler in response, agreeing to be there?

A. I presume I did. He was there. It was a telegram or a letter; I don't recall which. 3

Q. And after the meeting you drew up that agreement?

A. Yes.

Q. And after the agreement was drawn up you went to several manufacturers and obtained their signatures?

A. Yes.

Q. I show you a letter dated March 16, and addressed to W. J. Kohler, care of J. M. Kohler Sons Company, and ask you if you remember writing to him that day and if that is a copy of the letter?

THE WITNESS: You are asking now about the letter of March 16, this letter (indicating)? 4

Mr. GROSVENOR: Yes.

A. Yes, I recall writing such a letter.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 52."

The letter referred to, dated March 16, 1910, was then marked and filed as "Petitioner's Exhibit No. 52."

1 Mr. GROSVENOR: I will read that letter now (reading):

"Mar. 16, 1910.

"Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

"Dear Sir:—

"I enclose copy of Memorandum of Agreement which has been signed by the following companies that I have had the opportunity of seeing—

2

The McCrum-Howell Co.,
Blairsville Enameled Ware Co.,
National Sanitary Mfg. Co.,
The Barnes Mfg. Co.,
Standard Sanitary Mfg. Co.,
L. Wolff Mfg. Co.,
United States Sanitary Mfg. Co.,
A. Weiskittel & Son Co.,
The Humphryes Mfg. Co.,
Union Sanitary Mfg. Co.

3 "There is now a meeting of the Pipe Association going on in Pittsburgh which is very largely attended by most of the leading jobbers and the majority of them are very much in favor of the proposition. I hope you can see your way clear to join with the other Companies in this Arrangement.

"Will you be kind enough to let me hear from you as soon as possible?

"Yours very truly,
"E. L. Wayman."

4 Q. I show you a letter purporting to be from the Kohler Company dated March 21, 1910, in reply to that letter of yours, and I ask you if that is a copy of a letter which you received from them? A. Yes.

Mr. GROSVENOR: I offer that letter of March 21 as "Petitioner's Exhibit No. 53."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 53."

Mr. GROSVENOR: That letter reads as follows:

"March 21, 1910. 1

"Mr. E. L. Wayman,
Pittsburgh, Pa.

"Dear Sir:—

"We have your letter of March 16th with enclosed copy of tentative agreement entered into by certain manufacturers regarding license arrangement and resale prices. We have taken this question up with competent counsel, who advise that it is openly a price agreement and there is no question in his mind that it would be so considered, and is therefore 2
in conflict with the laws of Wisconsin. Under the circumstances we do not feel that we are in a position to enter into this agreement, although if a satisfactory arrangement can be worked out whereby we co-operate with your association we would do so.

"Very truly yours,
"J. M. Kohler Sons Co.,
"WJK-D per Pres."

Q. Did you send Mr. Kohler, in your letter of March 16, a copy of that Memorandum Agreement which has been put in as Government's Exhibit No. 3 and which you took 3
around with you to the different manufacturers?

A. I believe I did. I am not positive about that, though. Will you let me see that? (Letters were shown to witness.) Yes, I believe I did.

Q. You testified yesterday that on March 24 or about that day you sent out to all the manufacturers of sanitary enameled iron ware a copy of that license agreement between you and the manufacturers and the copy of the proposed form of the jobber's license agreement, which were put in evidence as Exhibits 8 and 10?

A. Yes, marked "Sample Copies." 4

Q. I show you what purports to be a copy of a letter by you addressed to Mr. Kohler on March 23, and ask you if you sent him that letter? A. Yes, sir.

Mr. GROSVENOR: I offer that letter as "Petitioner's Exhibit No. 54."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 54."

Mr. GROSVENOR: I will read that letter (reading):

"Mar. 23, 1910.

"Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

"Dear Sir:—

"There will be a special meeting of the Manufacturers for the purpose of entering into a License Agreement covering the Manufacture of Sanitary Enameled Iron Ware at the Hotel Astor, New York City, beginning at 10:30 A. M. Tuesday morning, March 29th, and concluding probably the 30th.

"The Hotel Management has placed at our disposal two committee Rooms on the 8th floor free of charge, in consideration of which I would suggest that you stop at the "Astor" if possible.

"Tomorrow I will send you copies of the License Agreement and the Jobbers' Agreement, etc. The entire matter together with the wording of the contracts has been passed on by competent counsel.

"Please come to the meeting prepared to file your 'Future Delivery Orders.'

"Please advise if you will attend.

"Yours very truly,

"E. L. Wayman."

Q. What were those future delivery orders?

A. Orders that he may have taken for delivery maybe the balance of the year. Such orders are taken frequently.

Q. Will you look at Exhibit 2 of the Petition, which is the resolution of the manufacturers to take no orders for delivery beyond May 31, 1910. That instruction to Mr. Kohler to come prepared to file his future delivery orders had in contemplation the passing of that resolution, is that right?

A. I cannot say that was so at the time the letter was written.

Q. Did you write to the other manufacturers to bring their future delivery orders? A. No, not all of them.

Q. You testified yesterday that you had that meeting of the 29th and 30th of March? A. Yes.

Q. Was Mr. Kohler present? A. No.

Q. Was his company represented? A. No.

Q Did you write him a telegram? A. Yes. 1

Q. Urging him to be there— I will show you what purports to be a copy of the telegram addressed to him on that date and ask you if that is a copy of the telegram which you say you sent to him? A. Yes, it is.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 55."

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 55."

Mr. GROSVENOR: I will read that telegram (reading): 2

"Mar. 29, 1910.

"W. J. Kohler,

c/o J. M. Kohler Sons Co.

"All manufacturers except you and Weiskittel represented at meeting. Weiskittel here tonight. 15 members here in person, balance by letter and wire. After a thorough consultation with attorney Jackson of Noble, Jackson & Hubbard we are all satisfied entire proposition is absolutely legal and more feasible and easier to handle than 3 electrical proposition which has been in force several years. Sense of meeting favorable to license agreement and resale proposition. 91% of production voting favorable, some await consultation and consent of their associates or counsel. Members desire your wire time for tomorrow's meeting called for 10 A. M.

"E. L. Wayman."

Q. Now, "All manufacturers except you and Weiskittel represented at meeting"; does that mean all members of the Sanitary Enameled Ware Association? 4

A. It refers to all the manufacturers that were in that association, yes, and another one, the Kerner Manufacturing Company, which was not a member of the association.

Q. He was there at the meeting?

A. No, he was at the hotel, though.

Q. Was he represented there at the meeting? A. No.

Q. Kohler did not join the licensing arrangement? A. No.

Q. (Reading): "15 members here in person, balance by

1 letter and wire"; you were authorized to represent them as favorable?

A. I had letters and telegrams from those not there stating the licensing arrangement I had proposed was agreeable to them.

Q. The consultation with Attorney Jackson has reference to the remarks which you said were delivered on that occasion? A. Yes, and to which I testified this morning.

Q. (Reading): "Sense of meeting favorable to license agreement and resale proposition"; did any one vote against the proposition at that meeting?

2 A. Not that I recall, but I believe some would not express an opinion or give a definite answer as to whether they would enter into a license agreement?

Q. Who were they?

A. Mr. Caldwell of the Cahill Iron Works.

Q. He subsequently assented?

A. Yes; and Mr. Kelly of the Iron City Sanitary Manufacturing Company.

Q. Did he subsequently sign? A. No.

Q. Who else was there and refused to sign? Was Mr. Kelly there?

3 A. He was there on the morning of the 29th, and I believe part of the afternoon.

Q. What did you do in the two days?

A. The meetings were not of long duration; after Mr. Jackson left, which was early in the afternoon, we adjourned.

Q. How long did he address the meeting?

A. Oh, I presume five or ten minutes, and he was asked a lot of questions.

Mr. NOBLE: You mean that he had talked about ten minutes?

4 A. Yes.

Q. Now, you say, "91 per cent. of production voting favorable"; you had the means, then, of ascertaining the production?

A. No, not as far as value was concerned. That was an estimate of what I thought the number of furnaces were that I would be able to license.

Q. As a matter of fact, all who indicated an intention to join that day did join except whom?

A. The Blairsville Enamel Company and the Clymer Manufacturing Company. 1

Q. And that is the only reduction, then, which should be made from the 91 per cent. as estimated that day?

A. Yes, and I wish to add that that estimate was considerably out of the way from being correct.

Q. You thought it was correct at the time? A. Yes.

Q. The rest reads: "Members desire your wire time for tomorrow's meeting called for 10 a. m." Were you instructed to wire to Mr. Kohler?

A. There was some discussion as to whether Mr. Kohler would enter into a license agreement. 2

Q. Was that discussion in the open meeting?

A. No, I think it was down stairs in the lobby afterwards.

Q. Who participated in that discussion?

A. That is pretty hard to say; I could not remember.

Q. Give us the best of your recollection?

A. I cannot say whether that was down stairs or whether it was in the meeting. Several of us composed the telegram.

Q. This meeting was a meeting of the members of the Sanitary Enameled Ware Association? 3

A. Not as an association.

Q. What was it a meeting of?

A. Manufacturers of Sanitary Enameled Iron Ware.

Q. Just for the purposes of considering this licensing arrangement? A. Yes.

Q. Who acted as secretary of the meeting?

A. There was no secretary.

Q. Were there any notes made of what went on?

A. Yes, I made notes and several others made notes for their own information as to the number of furnaces, &c., in the business; nobody seemed to know exactly how many furnaces existed. 4

Q. Who made notes?

A. I made notes; Mr. Hoelscher, I remember, made some notes; Mr. Caldwell made memorandums, I remember, particularly with reference to patent cases.

Q. Who else made notes? A. That is all I recall.

Q. Did you see those notes afterwards? A. No.

Q. Did you keep the notes which you made? A. No.

Q. Did you call the meeting to order?

A. No—yes, I called the meeting to order and suggested the election of a chairman.

Q. Who was elected chairman? A. Mr. Torrance.

Q. How long did you preside—just long enough to introduce him?

A. Yes, and to say that I had prepared preliminary license agreements—this is as I remember it, I cannot recall the exact language—of which copies had been furnished —and that the meeting was called to consider these license agreements.

Q. Mr. Torrance then took the chair?

A. I suggested that a chairman be appointed to preside at the meeting, and as I recall, the chairman was elected by vote.

Q. How many sessions did you have during these two days?

A. We had a morning session on the 29th and an afternoon session on the 29th; a morning session on the 30th— I don't remember whether we had a meeting in the afternoon or not.

Q. Was your introduction of Mr. Torrance at the morning session of the 29th?

A. I did not introduce Mr. Torrance.

Q. I understood you to say that you did. A. No.

Q. Did you give way to Mr. Torrance as chairman on the morning of the 29th?

A. I did not give way to Mr. Torrance or act as chairman. I simply called the meeting to order.

Q. When? A. In the morning.

Q. On the 29th? A. Yes.

Q. How long did you act as chairman?

A. I just told them what the meeting was called for and suggested that a chairman be elected.

Q. And Mr. Torrance was elected? A. Yes, sir.

Q. Did he preside at the rest of the morning session?

A. Yes.

Q. At how much of the morning session did he preside?

A. The balance of the session.

Q. How much was it?

A. I presume it may have lasted an hour or an hour and a half.

Q. Who presided at the afternoon session?

A. Mr. Torrance, I think.

Q. Who presided at the morning session the next day? 1

A. I don't know whether there was any chairman of that meeting or not.

Q. How long was the meeting on the morning of the 30th?

A. I couldn't say, but I will say that it might have lasted an hour.

Q. You do not recall whether there was a meeting in the afternoon of the 30th?

A. No, I do not. I want to make a statement. I am not quite clear on a point which I testified to this morning, and I am under the impression that I answered incorrectly. 2 It had something to do with Exhibit 4 in the petition, wherein, I believe, Mr. Grosvenor asked me if the license agreement referred to in my letter of April 16, known as Exhibit 4 of the petition, referred to the memorandum of agreement, which is known as Exhibit 3 in the petition. I believe I answered, "Yes." I meant to answer that the license agreement referred to in my letter of April 16, and mentioned in Exhibit 4, referred to the sample copies of the license agreement that I had prepared for consideration at the meetings held in New York March 29 and 30.

Examination suspended. 3

The taking of the testimony was then adjourned to the second day of November, 1910, at 10:30 o'clock a. m. at the same place.

Pittsburgh, Pennsylvania, November 2, 1910.

Pursuant to adjournment the evidence for the Petitioner was resumed this second day of November, 1910, at 10:30 o'clock a. m., at the same place, as follows, with same 4 counsel present.

EDWIN L. WAYMAN, a witness heretofore produced and sworn, resumed the stand for continuation of direct examination, and testified as follows.

DIRECT EXAMINATION (continued):

Mr. NOBLE: I am producing an original copy signed by Mr. Wayman of Petitioner's Exhibit No. 31, which

1 I found this morning. By agreement it is substituted in place of Exhibit No. 31 without the pencil notations.

BY Mr. GROSVENOR:

Q. I showed you yesterday a copy of the telegram addressed by you to Mr. Kohler on March 29, 1910, at the time of the conference in New York, urging him to wire you. That was introduced in evidence as Exhibit No. 55. I show you a paper and ask you if that was a copy of the reply received by you from Mr. Kohler?

2 A. Yes, that is a telegram of March 29.

Mr. GROSVENOR: I offer that telegram in evidence as Petitioner's Exhibit No. 56.

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 56."

Mr. GROSVENOR: I will read that: "March 29, 1910. E. L. Wayman, Hotel Astor, New York. You know our position on this question at present. Due to absence of counsel from city, we will not commit ourselves further on proposition now. If you will submit to us papers adopted at your meeting we will
3 give matter further consideration. Walter J. Kohler."

Q. I show you what appears to be a copy of a telegram addressed by you on March 31 to Walter J. Kohler, and ask you if that is a copy of the telegram sent by you to him on that day? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 57.

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 57."

Mr. GROSVENOR: I will read it: "March 31, 1910.
4 Walter J. Kohler. Matter shaped up here today and signed. Members pleased at your reply, as we can satisfy you legal end. Will you meet me Chicago or Sheboygan Saturday? Will submit brief and Court decision. Would mail papers but cannot do so. Wire appointment to Pittsburgh. E. L. Wayman. (Night Letter)."

Q. When you state in that telegram: "Matter shaped up here today and signed," what do you mean was signed?

THE WITNESS: May I have a copy of the Petition? 1

A copy of the Petition was then shown to the witness.

A. I had in mind what is known as Petitioner's Exhibit No. 2.

Q. Did you have in mind also the resolution passed on March 30 stating that the manufacturers of enameled ware hereby agreed to take no orders beyond May 31, 1910?

A. No.

Q. That resolution was signed the same day? A. No.

Q. Oh, that resolution was signed the 29th of March? 2

A. Yes.

Q. You state "would mail papers but cannot do so." What was the reason?

A. Mr. Jackson had a brief with him that I wanted to get, but I did not know whether I could get it at that time or not.

Q. You received in reply to that telegram another telegram from Mr. Kohler dated March 31, 1910? Is this it?

A. I don't know if that is the wording or not, but I believe that is so.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 58. 3

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 58."

Mr. GROSVENOR: I will read that: "March 31, 1910. E. L. Wayman, 1509 Arrott Building, Pittsburgh, Pa. Our attorney will not be home before 7th. However, if you desire, can meet you at our Chicago office at 9 Saturday morning, second, to discuss matters. Walter J. Kohler.

Q. I show you what purports to be another telegram addressed to Mr. Kohler and signed by you: It is dated March 4
31. Is that right? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 59.

The telegram referred to was then marked and filed as Petitioner's Exhibit No. 59."

Q. Did you have a conference with Mr. Kohler in Chicago as arranged in that telegram, which reads: "March 31,

1910, Walter J. Kohler: Will meet you 9 a. m. Saturday at your Chicago office. E. L. Wayman."

A. As I remember it I went to Chicago and saw either Mr. Kohler or Mr. Murphy, or both. I am not positive whether Mr. Kohler was there or not.

Q. Where was the meeting?

A. It was in Mr. Kohler's office.

Q. What was the object of your meeting him?

A. I took with me a brief giving an outline of patent case decisions which I secured from Mr. Jackson, and gave either Mr. Murphy or Mr. Kohler—not remembering whether Mr. Kohler was present—a list of cases which I asked him to turn over to his attorney to look up.

Q. Your object was to persuade Mr. Kohler to join the licensing arrangement? A. Yes.

Q. Was anybody there with you and Mr. Kohler and Mr. Murphy? A. No.

Q. You went alone? A. Yes.

Q. What did Mr. Kohler say?

A. I said I don't know now whether Mr. Kohler was there or not.

Q. Well, did you receive the consent of Mr. Kohler's firm to join?

Mr. NOBLE: I suppose you refer to the agreement?

Mr. GROSVENOR: Yes, the licensing arrangement.

Mr. NOBLE: Well, I object to that term "arrangement."

Mr. GROSVENOR: I used the term "licensing arrangement" to describe the whole thing, everything pertaining to it.

Q. Let me ask this question: Your object was to have the Kohler people enter into the same agreements with you that the other manufacturers contemplated entering into, is that it?

A. Contemplated entering into, yes. My entire idea was to try and get Mr. Kohler to enter into a licensing agreement with me, the same as I hoped to have the other manufacturers do.

Q. I show you a copy of a letter dated March 31, 1910, addressed to W. J. Kohler, president, J. M. Kohler Sons Company, Sheboygan, Wisconsin, and purporting to be

signed by you. Is that a copy of a letter addressed by you to him on that day? A. Yes. 1

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 60.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 60."

Q. I will read this letter: "I attach copies of the preliminary agreements, with signatures attached, that were entered into at the special meeting of the manufacturers held at New York March 29 and 30." You say there "copies of the preliminary agreements," using the plural. 2 What agreements were those?

A. Those agreements were known as Petitioner's Exhibits Nos. 2 and 4.

Q. Which were the resolutions signed on March 29 and 30 respectively? A. Yes.

Q. (Continuing): "In accordance with the resolution adopted for the appointment of a special committee to conclude the matter, the following gentlemen were elected by ballot: T. R. Barnes, A. H. Cline, Jr., Howard T. Gates, H. M. Hoelscher, F. J. Torrance." That has reference to the price and schedule committee? A. Yes. 3

Q. Which met at Mount Clemens? A. Yes.

Q. (Continuing): "This committee will begin a special ten days' session at Pittsburgh, beginning probably the latter part of next week." That meeting was held at Mount Clemens which has to be held at Pittsburgh?

A. Yes, at my suggestion it was changed, because we would have been interrupted by other business at Pittsburgh.

Q. The meetings at Mount Clemens lasted how long?

A. About a week.

Q. And you had daily sessions? A. Yes. 4

Q. Morning and afternoon? A. Yes.

Q. What time did you meet in the morning?

A. I don't remember.

Q. The morning session was several hours in duration?

A. We met in the morning and stopped for lunch, and then resumed in the afternoon.

Q. Then, did you meet in the evening again too?

A. No.

Q. (Continuing): "Will you therefore kindly study over

carefully the various paragraphs in the license agreement and jobber's agreement," you there referred to the printed forms issued on March 24? A. Yes.

Q. And considered at the meetings in March in New York? A. Yes.

Q. (Continuing): "and if you have any suggestion or amendments to offer, kindly write me in detail at once or make arrangements to appear before the committee. In case you decide to take up the matter in person, please write me beforehand regarding such matters as you may have to offer, and I will advise you the date on which the committee will meet with you;" did the committee make appointments to meet the gentlemen who appeared before it? A. No.

Q. It heard them as they came?

A. Yes, I arranged as near as I could ahead to get various people there when it was convenient.

Q. Mr. Hoelscher was chairman of the committee?

A. Yes.

Q. You acted as the secretary of the committee?

A. No, I did not.

Q. (Continuing): "In the absence of any reply from you, the committee will take it for granted that the license and jobber's agreements as printed, copies of which you have, are satisfactory to you, together with the 'differentials' allotted to your company in accordance with the attached sheet." By "differentials" you meant certain discounts allowed to the different manufacturers? A. Yes.

Q. And not those allowed to the Kohler Company?

A. No.

Q. The Kohler Company is one of the large companies?

A. Yes.

Q. And therefore it was not necessary to give them a differential?

A. No, on the basis of their own statement I considered it was not necessary to give them or allot them a differential, they having previously stated that they could obtain the same prices as the Standard Sanitary Manufacturing Company.

Q. (Continuing): "In accordance with the attached sheet," you, then, attached to this letter a schedule giving the preferential discounts which it was proposed to allot to the several companies?

A. Yes, which I proposed to allot to the several companies. 1

Q. (Continuing): "If the differentials allotted to your company do not meet with your approval, please state fully your views and reasons. Your very prompt attention to this entire matter is requested in order that the matter may be concluded within the shortest possible time. Yours very truly, E. L. Wayman." I show you what purports to be copies of those resolutions of March 30 and 29. Will you identify those? A. Yes, those are the resolutions of March 29 and 30.

Q. These were previously offered in evidence. Now I show you what purports to be a sheet of preferential discounts, which you stated in the letter just introduced were sent to Mr. Kohler. Will you look at this and state if that appears to be a copy? 2

A. As near as I can remember.

Mr. GROSVENOR: I will not offer that in evidence, but I will ask the stenographer to please mark it Exhibit 1 for identification.

Papers referred to were marked "Exhibit No. 1, for identification."

Q. I show you what purports to be a copy of a letter addressed to you by the Kohler Company on April 12, 1910, and ask you if that is a copy of the letter sent to you about the date indicated? A. Yes. 3

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 61.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 61."

Mr. GROSVENOR: I will read that:

"April 12, 1910. 4

"E. L. Wayman,
Pittsburgh, Pa.

"Dear Sir:—

"After consultation with our attorney we are firm in our position that we will not become a party to the license agreement now under consideration by the manufacturers of enameled ware, neither are we able to co-operate with you by agreeing to main-

tain a price as that is unquestionably contrary to not only the laws of Wisconsin but of the United States and we have no desire to evade either.

"Our product is equal to any on the market and we can assure you that we will get as good prices for our goods as any of the other manufacturers in the business.

"Very truly yours,

"J. M. Kohler Sons Co.,

"WJK-W Per (blank) Pres."

Mr. NOBLE: I object to the admission of the letter known as "Petitioner's Exhibit No. 61" in so far as it refers to a licensing arrangement now under consideration by the manufacturers of enameled iron ware. I have no objection to the letter as exhibiting the views of the Kohler Company, but do object to it as bearing any evidence of the views or attitude of any one else.

Mr. GROSVENOR: That letter is introduced by counsel for Government as part of the transactions at the time when the evidence shows E. L. Wayman was negotiating for the purpose of entering into licensing agreements with the Kohler Company, and it is part of the correspondence on that matter.

Q. Now, I show you a letter dated April 16, 1910, addressed to Walter J. Kohler. Will you look at that and state whether that is not a copy of Petitioner's Exhibit No. 31? A. Yes.

Q. You have testified that Petitioner's Exhibit No. 31 was a circular letter sent by you to the manufacturers of sanitary enameled ware on the day indicated? A. Yes.

Q. That states that: "Some changes were made in the arrangement of the schedules as you will note by the attached copy, as well as some changes in the differentials." I show you a sheet saying "The following 'preferential discounts' from the selling prices established by the Licensor will be allowed the various manufacturers on sales to jobbers only," and ask you if that is a copy of the sheet enclosed by you with the letter dated April 16, which is Petitioner's Exhibit 31, to the several manufacturers?

A. I believe that is correct.

Mr. GROSVENOR: Now, I offer that sheet for

identification and ask the stenographer to mark it for identification as Exhibit No. 2. 1

The paper referred to was then marked "Exhibit No. 2 for identification."

Q. I show you a copy of a letter apparently addressed by you to Kohler and dated April 27, 1910, and ask you if that is a copy of a letter addressed by you to him on that date? A. Yes.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 62."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 62." 2

Mr. GROSVENOR: This letter reads as follows:

"April 27, 1910.

"Mr. W. J. Kohler,
c/o J. M. Kohler Sons Co.,
Sheboygan, Wisconsin.

"Dear Sir:

"In order to prepare the final license agreement papers, will you please advise me by return mail under what State laws your company is incorporated. The meeting for executing these papers will be held in the offices of Noble, Jackson & Hubbard, 52 William Street, New York City, the latter part of next week, on the 5th or 6th of May. Please prepare to attend on either of these dates and I will advise you later by telegram or letter the exact date. It is of utmost importance that every one be present. 3

"Yours very truly,
"E. L. Wayman."

Q. At the time of writing that letter you had not given up hope of securing Mr. Kohler's signature? A. No. 4

Q. That is a copy of a letter addressed by you to all the licensed manufacturers indicated?

THE WITNESS: With reference to the meeting?

Mr. GROSVENOR: Yes.

THE WITNESS: To put through the license agreement?

Mr. GROSVENOR: Yes.

A. Yes.

Q. I show you copies of two letters, one addressed to you by Mr. Kohler dated April 29, and another a letter of yours dated May 2, 1910, to Mr. Kohler, and I ask you if those are copies of letters, one received by you and one written by you, about the dates indicated? A. Yes.

Mr. GROSVENOR: I offer those in evidence as Petitioner's Exhibits Nos. 63 and 64 respectively.

The letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 63 and 64."

Mr. GROSVENOR: I will read those letters:

"April 29, 1910.

"Mr. E. L. Wayman,
Pittsburgh, Pa.

"Dear Sir:—

"Answering yours of April 27. Our company is incorporated under the State laws of Wisconsin. As advised you some time ago, we will not enter into a license agreement and therefore will not be represented at the meeting in New York next week.

Very truly yours,
"J. M. Kohler Sons Co.,
per (blank) President."

Q. As a matter of fact, were they represented at that meeting? A. No.

Mr. GROSVENOR: I will now read Petitioner's Exhibit No. 64:

"May 2, 1910.

"Dear Mr. Kohler:

"Notwithstanding your recent letters, I am enclosing you copies of the final forms for your perusal. I sincerely hope that you and Mr. Murphy will at least attend the meeting to be held at New York Friday. With kindest regards, I am,

"Yours very truly,
"E. L. Wayman."

Q. The final forms there referred to were those printed forms signed May 6? A. No.

Q. What were they? 1

A. The final form of license agreement between the manufacturers and myself is referred to, and the final form of jobbers' license agreement is not the one referred to in that.

Q. You did enclose with that letter a copy of a proposed form of agreement between licensed manufacturers and jobbers? A. Yes.

Q. And that form contained the names, did it not, of the proposed licensed manufacturers?

A. Yes, and I believe—

Q. (Interrupting): Among those names were the names 2
of the Kohler Company, the Blairsville Company and the Iron City Company? A. Yes.

Q. At that time you were still endeavoring to secure license agreements with them? A. Yes.

Q. After May 6, those names were eliminated from the jobbers' license agreements, is that right? A. Yes.

Q. Mr. Wayman, I show you a book containing certain typewritten sheets and ask you if that book is a copy of the minutes of the Sanitary Enameled Iron Ware Association from August 4 to February 1, with the exception that the minutes for the meeting of February 1, 1910, have been 3
extracted previously and offered in evidence as Petitioner's Exhibit No. 7?

A. Yes, and some personal memorandums that I kept therein.

Mr. GROSVENOR: I offer that book and ask the stenographer to mark it for the purpose of identification as Exhibit No. 3.

The paper referred to was then marked "Exhibit No. 3 for identification."

Q. I show you certain pages in this book of minutes 4
known as "Exhibt 3 for identification" and ask you if those are the minutes of the general meeting of the Sanitary Enameled Iron Ware Association under date of October 6, 1909, at Pittsburgh. Are those correct?

A. Yes, sir.

Q. How many pages of those minutes are there?

A. Four.

Q. I will read from the fourth page the following paragraph: "Regarding the policy of selling concerns who re-

1 sell direct to the consumer, the Commissioner was instructed to prepare a resolution, the wording of which would not interfere with the law in regard to the restraint of trade, and present same at the next meeting for consideration."

Mr. NOBLE: Are you reading that in evidence?

Mr. GROSVENOR: I am reading that from those minutes which have been identified as the minutes of this association for the meeting of October 6, 1909, at Pittsburgh.

Mr. NOBLE: I object, on the ground that it is
2 incompetent, immaterial and irrelevant and has nothing to do with the issues raised in this suit.

Q. Will you look at this page of these minutes (indicating) and read the companies represented at that meeting, with the names of the persons representing them?

A. (Reading):

Members	Representatives
Blairsville Enameled Ware Co.	Blairsville, Pa. Mr. F. D. Cook Mr. Reed
3 Barnes Mfg. Co., The	Mansfield, O. Mr. T. R. Barnes
Cahill Iron Works, The	Chattanooga, Tenn. Mr. F. H. Caldwell
Clymer Mfg. Co.	Indiana, Pa. Mr. W. A. Guthrie
Colwell Lead Co.	New York Mr. J. T. Duryea
Day-Ward Co., The	Warren, O. Mr. A. G. Ward
Humphryes Mfg. Co., The	Mansfield, O. Mr. D. A. Carpenter
4 Iron City Sanitary Mfg. Co.	Pittsburgh, Pa. Mr. J. A. Kelly
Kohler Sons Co., J. M.	Sheboygan, Wis. Mr. Walter J. Kohler
Mott Iron Works, The J. L.	New York City Mr. Edward Hammann
McVay & Walker,	Braddock, Pa. Mr. Alex. C. Walker

McCrum-Howell Co.	New York City Mr. Howard T. Gates	1
National Sanitary Mfg. Co.	Salem, Ohio Mr. F. G. Borden Mr. Edwin Baillee	
Standard Sanitary Mfg. Co.	Pittsburgh, Pa. Mr. Theo. Ahrens Mr. W. A. Myler	
Union Sanitary Mfg. Co.	Noblesville, Ind. Mr. C. E. Gates	
United States Sanitary Mfg. Co.	Pittsburgh, Pa. Mr. A. H. Cline, Jr. Mr. C. F. Arrott	2
Wolff Mfg. Co., L.	Chicago, Ill. Mr. H. M. Hoelscher	
Weiskittel & Son, A.	Baltimore, Md. Mr. A. Weiskittel	
Wheeling Enameled Iron Co.	Wheeling, W. Va. Mr. J. E. Wright.	

Q. The paragraph which I have read states that the Commissioner—you were the Commissioner? A. Yes. 3

Q. "was instructed to prepare a resolution, the wording of which would not interfere with the law in regard to the restraint of trade"; did you consult with counsel in respect to the wording of such a resolution? A. Yes.

Q. Whom did you consult?

A. Consulted with my uncle in Chicago.

By Mr. Noble:

Q. What is his name?

A. John E. Wayman, and Walter Lyon, of Lyon & Hunter, Pittsburgh. 4

By Mr. Grosvenor:

Q. Any one else? A. No.

Q. I show you certain pages in this book which has been marked for identification as Exhibit No. 3, and I ask you if those are the minutes of the executive committee of the Sanitary Enameled Ware Association for November 30, 1909, at Pittsburgh, consisting of two pages? A. Yes.

Mr. Grosvenor: I will read from the page of

the minutes which you have identified as being the minutes of November 30, of the executive committee: "The question of the policy of the Manufacturers selling concerns who in turn did not confine their sale through the recognized trade channels, i. e., through the plumber and not direct to the Consumer, was discussed. No concerted action on this matter was taken, but each Manufacturer present expressed himself to the effect that in the future he would confine his sales to such Companies that came within the definition of a Jobber or Plumber as defined by the National Trade Resolutions and that he would individually refuse to sell Jobbers who in turn did not confine their sales through the recognized trade channels."

The next paragraph reads:

"It was the sense of the Meeting that the Commissioner be instructed to take the matter up with the various Supply Associations, acquaint them with the policy of the Manufacturers and secure their co-operation."

The next paragraph reads:

"The following Resolutions were unanimously adopted subject to the approval of the Members at the General Meeting to be held Dec. 1st.

"RESOLVED: That the Manufacturers shall not accept any orders for Sanitary Enameled Ware for Delivery beyond March 31st, 1910; that any Future Delivery Order shall not be accepted without definite specifications and shipping dates, and subject to the proviso that the Manufacturer shall have the option of shipping any unfilled portion of such future delivery orders any time during the month of March, 1910."

Mr. NOBLE: I object to the paragraphs that have been read and move that they be stricken from the record as immaterial, incompetent and irrelevant, and as having nothing to do with the licenses granted by Mr. Wayman and the questions involved in the suit.

Mr. GROSVENOR: Counsel states that these minutes are introduced with the object of showing the purpose of the license agreements between Wayman and the manufacturers, which purpose is set out in the petition. 1

Mr. NOBLE: I renew my objection on the same grounds.

BY Mr. GROSVENOR:

Q. Will you read the names of the persons which those minutes of November 30 state were present at the meeting of the executive committee? 2

A. (Reading):

"D. A. Carpenter, representing Humphryes Mfg. Co.,
A. H. Cline, Jr., representing U. S. Sanitary Mfg. Co.,
H. M. Hoelscher, representing L. Wolff Mfg. Company,
Theo. Ahrens, representing Standard Sanitary Mfg. Co.,
E. L. Dawes, representing " " " "
C. E. Gates, representing Union Sanitary Mfg. Co.,
J. A. Kelly, representing Iron City Sanitary Mfg. Co.,
A. Weiskittel, representing A. Weiskittel & Son Co."

Q. I now show you in this same Exhibit No. 3, marked for identification, certain pages purporting to be the minutes of the second general meeting of the members of the Sanitary Enameled Ware Association of December 1, 1909, at Pittsburg, and ask you if those are the minutes of that meeting as drawn up by you as Commissioner of that Association? A. Yes, sir. 3

Q. I will read from the minutes of that meeting which you have identified—this is on the first page:

"The question of the policy of the Manufacturers selling concerns who in turn did not confine their sales through the recognized trade channels, i. e., through the Plumber and not direct to the Consumer, was discussed. No concerted action on this matter was taken, but each Manufacturer present expressed himself to the effect that in the future he would confine his sales to such Companies that came within the definition of a Jobber or Plumber as defined by the National Trade Resolutions and that he would individually refuse to sell Jobbers who in turn did not confine their sales through the recognized trade channels. 4

"It was the sense of the Meeting that the Commissioner take the matter up with the various Supply Associations, acquaint them with the individual policy of the Manufacturers and secure their co-operation."

What supply associations are referred to there by the phrase "various supply associations"?

Mr. NOBLE: I object to the reading of the portion of the minutes just read by counsel on the ground that they are immaterial and irrelevant, and the question of counsel as to the supply associations there referred to is likewise immaterial and irrelevant.

A. The Eastern and Central Supply Associations.

Q. Any other? A. No.

Q. What is the Eastern Supply Association a supply association of?

A. A supply association of Jobbers in Plumbing Supplies in the east and the Central in the west.

Q. It says here that it was the sense of the meeting that the Commissioner take the matter up with the various supply associations. In the Eastern Association with whom did you take the matter up? A. Mr. Frank S. Hanley.

Q. As representing that association?

A. Yes, and Paul Blatchford.

Q. For which association?

A. The Central Supply Association. I am not positive about the last, whether I took it up with Mr. Blatchford or not.

Q. With whom did you take the matter up in the Eastern Association? A. Mr. Hanley. I wrote to him.

Q. Was he connected with the committee of the National Supply Association? A. I believe he was.

Q. In what capacity? A. Secretary, I think.

Q. What are the National Trade Resolutions referred to here?

A. The National Trade Resolutions describe what, in the estimation of the representatives of the various associations constitute a jobber of plumbing supplies.

Q. I show you that Blue Book which you produced yesterday and which was filed as part of Exhibit 30; the pencil marks on the book indicating the jobbers with whom the various licensed manufacturers have entered into contracts,

and the typewritten sheet forming the rest of Exhibit 30 the whole exhibit giving the names of every jobber with whom the licensed manufacturers have entered into contracts, and I direct your attention to pages 2 and 3 of that book and ask you if that is the definition to which you referred in your last answer? A. Yes. 1

Q. And are those the resolutions which are referred to in this paragraph of the minutes which I have read, which paragraph states "but each Manufacturer present expressed himself to the effect that in the future he would confine his sales to such Companies that came within the definition of a Jobber or Plumber as defined by the National Trade Resolutions and that he would individually refuse to sell Jobbers who in turn did not confine their sales through the recognized trade channels." 2

Mr. NOBLE: The same objection is offered as heretofore to this line of questions.

A. The wording of Mr. Grosvenor's question says: "the definition of a Jobber or Plumber as defined by the National Trade Resolutions," and the matter referred to in the minutes exhibited does not refer to the resolution, but refers to what constitutes a jobber of plumbing supplies in the estimation of the representatives of the various supply associations. 3

Q. What I want to know is, is this a copy of the resolution referred to? A. I don't know.

Q. What is your opinion?

A. I am of the opinion that the one given there is correct.

Q. Whom was that (indicating) gotten up by?

A. I don't know who got up that list.

Q. Where did you get it? A. From Mr. Hanley.

Q. And he is the secretary of the Eastern Supply Association? A. Yes. 4

Q. And this is a list of the jobbers of plumbing supplies in the United States? A. Not a complete list.

Q. Will you now read into the record the names of the persons present as shown by the minutes of the second meeting of the Sanitary Enameled Ware Association as of December 1, 1909?

A. (Reading):

"T. R. Barnes, representing Barnes Mfg. Co., Mansfield, Ohio.
W. A. Guthrie, representing Clymer Mfg. Co., Indiana, Pa.
A. G. Ward, representing The Day-Ward Co., Warren, O.
D. A. Carpenter, representing Humphryes Mfg. Co., Mansfield, O.
H. D. Kenney, representing Humphryes Mfg. Co., Mansfield, O.
J. A. Kelly, representing Iron City Sanitary Mfg. Co., Pittsburgh.
Edward Hammann, representing J. L. Mott Iron Works, New York.
Howard T. Gates, representing McCrum-Howell Co., New York.
F. G. Borden, representing National Sanitary Mfg. Co., Salem, Ohio.
Theo. Ahrens, representing Standard Sanitary Mfg. Co., Pittsburg, Pa.
E. L. Dawes, representing Standard Sanitary Mfg. Co., Pittsburgh.
C. E. Gates, representing Union Sanitary Mfg. Co., Nobles-
ville.
A. H. Cline, Jr., representing U. S. Sanitary Mfg. Co., Pittsburgh, Pa.
H. M. Hoelscher, representing L. Wolff Mfg. Co., Chicago, Ill.
A. Weiskittel, representing A. Weiskittel & Son Co., Baltimore, Md."

Q. Do you recall writing to Mr. Hanley after the passing of that resolution? A. Yes.

Q. I show you in the same book a copy of a letter dated December 7, 1909, apparently addressed by you to Mr. Frank S. Hanley and marked "Personal," and ask you if that is a letter which was addressed by you to him on or about that date? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 65.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 65."

Mr. NOBLE: I offer the same objections as here- 1
tofore noted to the admission of this letter.

Mr. GROSVENOR:. Counsel for the Government states that this was offered in evidence for the purpose of sustaining, in part, the allegation in the Petition on page 12 as follows: "No defendant will sell any of its products in such commerce to any person or company who is not recognized by all the defendants as a jobber. That is to say, all the defendants confine their sales to such persons as all the defendants consider to be legitimate jobbers of sanitary enameled iron ware." 2

Mr. NOBLE: I offer the same objections as heretofore mentioned, and the further objection that the letter offered has nothing to do with the license agreements which Mr. Wayman has executed with the several licenses.

Mr. GROSVENOR: This letter is also offered in evidence for the purpose of showing the intent of the license agreements?

Mr. NOBLE: Note the same objections.

Mr. GROSVENOR: I will read this letter:

"Dec. 7th, 1909. 3

"Mr. Frank S. Hanley,
261 Broadway,
New York.

PERSONAL.

"Dear Sir:

"Replying to your recent letters with reference to the Manufacturers selling concerns who did not come within the definition of a Jobber as defined by the National Trade Resolutions.

"At the meeting of the Manufacturers held on Nov. 4
30th and Dec. 1st, the question of the policy of the Manufacturers selling concerns who in turn did not confine their sales through the recognized trade channels, i. e., through the Plumber and not direct to the Consumer, was discussed. No concerted action on this matter was taken, but each Manufacturer present expressed himself to the effect that in the future he would confine his sales to such Companies

1 that came within the definition of a Jobber or Plumber as defined by the National Trade Resolutions and that he would individually *refuse to sell Jobbers* who in turn did not confine their sales through the recognized trade channels.

"This individual expression was given with the understanding that the Manufacturers would receive support from the Jobbers in this matter. No concerted action on this matter was taken for reasons which you well know.

"Attention was called to the fact that the Manu-
2 facturers had come in contact with several instances in which the Jobbers were doing the very thing they have been asking the Manufacturers not to do.

"The Manufacturers desire to receive assurances that the Jobbers will do their part in supporting them in bringing about a better condition of affairs in this respect.

"In view of all the efforts that have been made to get the Manufacturers into this frame of mind, the Jobbers should consider this matter seriously, as it is undoubtedly the best opportunity that has been
3 presented to them to co-operate with the Manufacturers and eliminate the possibility of illegitimate concerns securing goods.

"Will you be kind enough to take this up through the proper channels and let us hear from you?

"Yours very truly,"

Q. (Reading): "No concerted action on this matter was taken, for reasons which you well know." What are the reasons?

A. Well, I brought the matter up in a personal way—

Mr. GROSVENOR: Just answer the question.

4 THE WITNESS: I am answering the question. As I understood it the jobbers throughout the country had been for years trying to—

Mr. GROSVENOR: I am asking about the action of the manufacturers. Why could there not be concerted action by the manufacturers?

THE WITNESS: Just a minute.

Mr. NOBLE: I call attention to counsel for the Government interrupting the witness.

Mr. GROSVENOR: Read the question. 1

The stenographer then read the question.

A. The jobbers, as I understood it, had been trying for years to get the various enameled ware associations which had been formed from time to time to act as a body in passing such a resolution as is called attention to, but it met with no success. What I called attention to in that letter I considered it useless.

Q. Why do you say "no concerted action was taken for reasons which you well know"?

A. I have just explained why.

Q. What action was taken, individual action, wasn't it? 2 Let me refresh your recollection by referring you to that paragraph of the minutes which I read a while ago and which instructed you to draw up a resolution which would not be in violation of the laws in restraint of trade. When you say here "no concerted action in this matter was taken for reasons which you well know," is not the reason which you referred to this, that in your judgment concerted action would have been unlawful?

A. I don't know that that question came up at the time on my part, but I could add that there might have been a doubt in my mind existing as to whether that would be 3 lawful.

Q. And so as to remove the doubt of unlawfulness you had individual action, is that right? A. No, absolutely no.

Mr. NOBLE: I object to that last question. The witness has said that there was no concerted action taken, and the question contained the suggestion that some action was taken.

Mr. GROSVENOR: Well, the minutes show it.

THE WITNESS: No, they do not. I object to that.

BY Mr. GROSVENOR: 4

Q. I will read on: "Attention was called to the fact that the manufacturers had come in contact with several instances in which the jobbers were doing the very thing they have been asking the manufacturers not to do. The manufacturers desire to receive assurances that the jobbers will do their part in supporting them in bringing about a better condition of affairs in this respect. In view of all the efforts that have been made to get the manufacturers

into this frame of mind, the jobbers should consider this matter seriously, as it is undoubtedly the best opportunity that has been presented to them to co-operate with the manufacturers and eliminate the possibility of illegitimate concerns securing goods. Will you be kind enough to take this up through the proper channels and let me hear from you." Did you hear from Mr. Hanley in response to that letter? A. I believe I received an acknowledgement.

Q. Have you retained it?

A. No, I think I turned it over to you in New York City.

Mr. GROSVENOR: I haven't it.

Mr. NOBLE: We will see if it is here.

Q. Now, in the beginning of this letter, Petitioner's Exhibit No. 65, you say, "Replying to your recent letters"; have you those other letters? A. No, I haven't them.

Q. Have you any recollection of what became of them?

A. I am under the impression that I handed everything over to you at the time.

Q. You mean at the meeting of May 23rd?

A. Yes, at the time you examined me I think I told you that I kept very little correspondence or bulletins from Mr. Hanley, because I did not consider them of any importance and threw them in the waste-basket.

Mr. GROSVENOR: My recollection is that none of those letters were received, and moreover all letters were returned to your counsel.

Mr. NOBLE: There is no such letter in our files, Mr. Grosvenor.

Q. I direct your attention to another page of the Exhibit marked for identification as No. 3 and which we have identified as the minutes of the Sanitary Enameled Ware Association, and ask you if the minutes which I show you are the minutes for August 18, 1909, of the executive committee of the Sanitary Enameled Ware Association?

A. Yes.

Mr. GROSVENOR: I read from the pages which you have identified as being the minutes of that meeting the following paragraph: "It was the sense of the meeting that the present selling prices on a good

many articles were entirely too low and should be remedied." I now read from the same minutes the names of those present: 1

Representatives	Companies
Mr. D. A. Carpenter,	representing The Humphryes Co.
" H. M. Hoelscher,	representing L. Wolff Co.
" L. C. Huesmann,	representing Union Sanitary Mfg. Co.
" A. H. Cline, Jr.,	representing United States Sanitary Mfg. Co.
" Francis J. Torrance,	representing Standard Sanitary Mfg. Co. 2
" A. Weiskittel,	representing A. Weiskittel & Sons.
" J. A. Kelly,	representing Iron City Sanitary Mfg. Co.

Mr. NOBLE: Mr. Stenographer, please note my objections to the portion of the minutes just read on the grounds before stated, and also my objections to the paragraph which the counsel for Government is about to read.

Mr. GROSVENOR: I will read the following.

"In the absence of Mr. Kohler, Vice-Chairman, Mr. Francis J. Torrance acted as Chairman. 3

"The minutes of the meeting for August 4th were read and approved.

"A letter was read from Mr. Walter J. Kohler, stating that he would be unable to act as Chairman of the Board of Directors.

"It was moved and seconded that Mr. Hoelscher on his return to Chicago, see Mr. Murphy and Mr. Kohler with reference to the matter. Carried."

Now I will read the next paragraphs.

Mr. NOBLE: Note the same objections.

Mr. GROSVENOR: (Reading): "A communication 4 was read from The J. L. Mott Iron Works acknowledging minutes of the meeting held August 4th, and stating that they would sign the Articles of Association as soon as they were forwarded.

"A letter was read from Mr. Torrance, stating that Mr. Wayman had accepted the position of Commissioner at the salary named, Four Thousand Dollars ($4,000.00), per year, together with office, travelling

and other necessary expenses for the conduct of the Association."

Mr. NOBLE: In addition to my previous objections, I would like to object on the ground that the minutes show that at that time Mr. Wayman had no connection with the association of which these are the minutes.

Q. I point out to you the word at the end of those minutes "Commissioner"; do you recall whether you had come to Pittsburgh at that time, August 18?

A. Yes, I believe counsel's objection is an error. I was in Pittsburgh at that time.

Q. You signed these minutes?

A. I don't know. I simply made copies of them and sent them on. I may have signed them.

Q. Were you present at the meetings of the executive committee of the Sanitary Enameled Ware Association?

A. Yes.

Q. You acted as secretary? A. Yes.

Q. Were you present at this meeting? A. Yes.

Q. In performing the duties of Commissioner you also performed the duties of secretary of the Association?

A. There was a secretary, Mr. Hoelscher.

Q. Well, who drew up the minutes?

A. I made memorandums and sent them off for the secretary.

Q. I direct your attention to another page of this exhibit marked for identification No. 3, being a statement of assessments for the year beginning August 5, 1909. Is that a true and accurate statement of the assessments?

A. Yes.

Q. I notice here that the amounts assessed upon the several companies are different. For instance, that of the Standard Sanitary Manufacturing Company in the first column is $2,700, and in the second, $4,050, whereas in other companies, such as the Colwell Lead Company the assessment in the first column is $150 and in the second column $225. Will you state why the assessments upon the different companies were different?

A. In making up those figures the amounts were used that had been paid in approximately by the various companies into former associations, and were arrived at ap-

proximately on the basis of the relative output or importance of the various companies.

Mr. GROSVENOR: I offer that page in evidence as Petitioner's Exhibit No. 66.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 66" and reads as follows:

ASSESSMENT FOR YEAR BEGINNING AUGUST 5th, 1909.
" " " " FEBRUARY 5th, 1910.

			Quarter.	
Blairsville Enameled Ware Co.	$ 150.00	$ 225.00	$ 37.50	$ 56.25
Barnes Mfg. Co., The	200.00	300.00	50.00	75.00
Cahill Iron Works, The	400.00	600.00	100.00	150.00
Colwell Lead Co.	150.00	225.00	37.50	56.25
Clymer Mfg. Co.	150.00	225.00	37.50	37.50
Day-Ward Co., The	300.00	450.00	75.00	112.50
Humphryes Mfg. Co.	300.00	450.00	75.00	112.50
Iron City Sanitary Mfg. Co.	500.00	750.00	125.00	187.50
Kohler Sons Co., J. M.	500.00	750.00	125.00	187.50
Mott Iron Works, J. L.	300.00	450.00	75.00	112.50
McVay & Walker	200.00	300.00	50.00	75.00
McCrum-Howell Co.	300.00	450.00	75.00	112.50
National Sanitary Mfg. Co.	300.00	450.00	75.00	112.50
Standard Sanitary Mfg. Co.	2700.00	4050.00	675.00	1012.50
Union Sanitary Mfg. Co.	300.00	450.00	75.00	112.50
United States Sanitary Mfg. Co.	500.00	750.00	125.00	187.50
Wolff Mfg. Co., L.	750.00	1125.00	187.50	281.25
Weiskittel & Son, A.	300.00	450.00	75.00	112.50
Wheeling Enameled Iron Co.	200.00	300.00	50.00	75.00
	$8500.00	$12750.00		$3187.50

Q. Have you produced the agreements for the assignment of the Lindsay and Ditheridge patents? A. I have.

1 Mr. GROSVENOR: I offer those produced by counsel, in evidence, namely, as follows, as Petitioner's Exhibit No. 67, the agreement between E. L. Wayman and the Mott Iron Works, dated the 5th of May, 1910.

The paper referred to was then marked and filed as Petitioner's Exhibit No. 67."

Q. That was executed by you on that day?

THE WITNESS: On the 5th of May?
Mr. GROSVENOR: Yes.

2 A. Yes.

Q. And immediately after you executed the paper which I now show you (indicating)? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 68, it being the assignment by J. L. Mott Iron Works to E. L. Wayman of the Patent No. 949,625.

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 68."

Mr. GROSVENOR: I offer in evidence the agreement produced by counsel dated May 4, 1910, and executed between E. L. Wayman and L. Wolff Manufacturing Company as Petitioner's Exhibit No. 69, and the assignment between the same parties and dated the same day as Petitioner's Exhibit No. 70.

3

Q. This assignment was executed immediately after the agreement? A. Yes.

Q. Now, prior to this assignment of the Lindsay patent on May 4, you had paid no money for any option?

Mr. NOBLE: Objected to as immaterial, incompetent and irrelevant.

4

A. No.

Q. Prior to the assignment of the Arrott patent to you—which was on what date? A. The fourth of May.

Q. (Continuing): You had paid nothing for any option?

Mr. NOBLE: Note the same objection as heretofore noted.

A. No.

Q. Prior to the 5th of May, on which day was executed the assignment of the Ditheridge patent to you, you had paid no consideration? 1

Mr. NOBLE: Note the same objections.

A. No.

Q. On what day did you take an assignment of the Arrott patent? A. The 4th of May.

Q. On that day how much did you pay for the patent?

A. $10,000.

Q. In what form? You testified you had paid in note $5,000 and $5,000 in cash? A. Yes. 2

Q. Did you pay the $5,000 in cash on the 4th of May?

A. I did.

Q. At the time of the assignment? A. Yes.

Q. Was that by check? A. Yes.

Q. On what bank?

A. People's State Bank of Detroit, Michigan.

Q. Before you came to Pittsburgh you were connected with a company in Detroit? A. Yes.

Q. Had that company failed? A. In one respect.

Q. It had closed up business? A. Yes.

Q. What was your capacity in that company? 3

A. My title was assistant manager, and I was acting as manager.

Q. Were you the owner of that company? A. No.

Q. Was it a stock company? A. Yes.

Q. Did you own stock in it? A. Yes.

Q. Did you receive a loan from any one to make that payment of $5,000 to the Standard? A. From the bank.

Q. Which bank? A. People's State Bank.

Q. Had you at the time a large deposit with them?

A. No.

Q. Had you any deposit with them? A. No.

Q. Who introduced you to the bank? 4

A. Mr. Eugene Sloman.

Q. What security did you give for the loan? A. Stock.

Q. In what company?

A. Standard Sanitary Manufacturing Company.

Q. Was the stock in the Standard Sanitary Manufacturing Company which you deposited as security for the loan of $5,000 your own? A. Yes.

Q. When did you obtain it? A. On May 2nd.

1 Q. 1910? A. Yes.
Q. Who assigned it to you?
A. It was not assigned to me.
Q. Who gave it to you? A. Mr. Myler.
Q. What office does he hold? A. Treasurer.
Q. How many shares did he give you? A. 100.
Q. Did you pay anything for it? A. Yes.
Q. How much? A. I exchanged collateral with him.
Q. What company?
A. The Universal Electric Welding Company of New York City.
2 Q. Was that stock yours? A. No.
Q. Who gave it to you? A. Mr. Eugene Sloman.
Q. Who is he?
A. An old friend of mine, I have known him for ten years.
Q. Did you pay anything for it? A. No.
Q. What was it worth on the market?
A. I considered it worth at that time from sixty to seventy-five dollars a share.
Q. It was given to you outright?
A. It was loaned to me.
Q. Loaned to you? A. Yes.
3 Q. Did you pay anything for the loan? A. No.
Q. How many shares did you get from Mr. Sloman?
A. 300.
Q. When did you get these 300 shares from Mr. Sloman? A. The 29th of April.
Q. Of what year? A. 1910.
Q. Did you tell him why you wanted those 300 shares?
A. I did.
Q. Whom did you see regarding the assignment to you of the 100 shares of the Standard Sanitary Manufacturing Company besides Mr. Myler? A. Only Mr. Myler.
4 Q. Did you have any conversation with Mr. Torrance respecting that assignment to you? A. No.
Q. You say you did not have any conversation with Mr. Torrance respecting the assignment to you? A. No.
Q. Do you recall a meeting in New York City on June 20 at which I was present? A. Yes.
Q. Do you recall stating at that time that you discussed the matter of the assignment with the executive committee of the Sanitary Enameled Ware Association?

A. I recall that I had discussed the entire matter with various members of the executive committee. 1

Q. Do you recall with whom you stated you had spoken of the matter?

THE WITNESS: Of the matter in general or the assignment?

Mr. GROSVENOR: First of the assignment of the patent to you?

A. Mr. Dawes and Mr. Myler and Mr. Torrance.

Q. Are you able to state then at this time that you did discuss that matter with Mr. Torrance, the matter of the assignment of this patent to you? 2

A. I am able to state that I had made arrangements with Mr. Dawes for the assignment of the patent.

Q. Will you answer my question. Did you or not discuss with Mr. Torrance the assignment of the patent to you?

THE WITNESS: In what respect.

Mr. GROSVENOR: Read the question.

The stenographer then read the question.

A. Yes, in some respects.

Q. How long had you known Mr. Torrance? 3

A. Since the early part of 1907.

Q. How old are you, Mr. Wayman? A. Thirty-two.

Q. Mr. Torrance was the one who made the offer to you to come to Pittsburgh? A. No.

Q. He was the one who telephoned to you to come to Pittsburgh for the manufacturers?

A. He telephoned to me the decision of the manufacturers at a meeting held some time previous.

Q. You say Mr. Myler loaned you 100 shares of the Standard Sanitary Manufacturing Company's stock?

A. Yes, sir. 4

Q. On your note as security? A. No, to borrow on.

Q. To borrow how much?

A. I wanted to borrow from the bank, and he took and exchanged this collateral which I gave him.

Q. Did you offer to let him have the stock which you got from Mr. Sloman in New York?

A. I didn't get security from Mr. Sloman in New York; Mr. Sloman is from Detroit.

1 Q. This $500 which you say you paid for the Ditheridge patent? A. Yes.

Q. That was paid what day? A. May 5.

Q. Did you pay that in check or in cash? A. In check.

Q. What bank?

A. On the People's State Bank, Detroit.

Q. Is Mr. Sloman an officer in that bank? A. No.

Q. A depositor there? A. Yes.

Q. Was that check which you gave in payment of this $500 and which was drawn on this deposit in the People's Bank, drawn on the same deposit upon which the check
2 which you gave Mr. Myler was drawn? A. Yes.

Q. You opened an account there at that bank, then, upon the deposit of this electric stock, is that right?

A. Yes, having had an account there previously.

Q. You got from them a loan which was secured by this electric stock, is that right? A. Yes.

Q. How much was that loan? A. $7,000.

Q. That was the loan on the electric stock? A. Yes.

Q. How much deposit had you prior to that?

THE WITNESS: In that bank?

MR. GROSVENOR: Yes.

3 A. It was very small, and it had been several years since I had a deposit there.

Q. You had not drawn any checks on that bank for several years? A. Not that I recall.

Q. Was your deposit several dollars? A. Yes.

Q. Several hundred dollars? A. Yes.

Q. Several thousand dollars?

A. I don't know if it got in the thousands or not.

Q. But you had not drawn on the bank for several years? A. No, sir.

Q. You got, then, a loan for $7,000? A. Yes, sir.

4 Q. And you had an account of over $7,000 then?

A. No, I think not; I had closed my old account previous to that.

Q. How much did you then have? A. I cannot say that.

Q. Now, as to the Lindsay patent, you paid $500 for that? A. Yes.

Q. Was that paid by check drawn on the same bank?

A. Yes, as I remember it.

Q. About the same time? A. Yes, on May 4. 1

Q. Now, these three checks, the one for the Arrott patent and the one for the Lindsay patent and the one for the Ditheridge patent were all drawn after you had secured the loan on that electric stock? A. Yes, sir.

Examination Suspended.

At this point a recess was taken for one hour, the hearing to resume at 2 o'clock p. m.

2

After Recess.

EDWIN L. WAYMAN, resumed the stand for continuation of direct examination and testified as follows.

DIRECT EXAMINATION BY MR. GROSVENOR (continued):

Q. Now, before leaving this subject—that is, the subject which we were discussing before adjournment—I want to get clearly in my own mind and on the record how these patents were paid for? A. Yes.

Q. I understand you to say that at the time you took an assignment of the Arrott patent you paid $5000 by check 3
on a bank in Detroit. What bank was that?

A. The People's State Bank.

Q. And that you gave a note for $5000 secured by certain shares of stock of the Standard Sanitary Manufacturing Company; is that correct?

A. No, I didn't say that. I didn't say that note was secured by shares. The note was not secured.

Q. Did you give any collateral with the note? A. No.

MR. NOBLE: Do you mean the note to the Standard Sanitary Manufacturing Company? 4

MR. GROSVENOR: The note to the Standard.

THE WITNESS: No.

Q. What did you do with those shares of the Standard Sanitary Manufacturing Company then; please explain that.

A. I sent them to the People's State Bank in Detroit, Michigan, with my personal note, using the stock as security for a loan of $7000.

1 Q. From the bank? A. From the bank.

Q. Then, the note which you gave for $5000 to the Standard had no security? A. No.

Q. Other than your signature? A. That is all.

Q. Now, for the loan of $7,000 made to you by that bank in Detroit you gave how many shares of Standard Sanitary stock? A. 100.

Q. Anything else? A. No, outside of my note.

Q. Those 100 shares of Standard you got from whom?

A. Mr. Myler, which was his personal stock.

Q. Mr. Myler is an officer of the Standard Sanitary
2 Manufacturing Company? A. Yes.

Q. What officer? A. Secretary and treasurer.

Q. Is he one of the executive committee of that company? A. Yes.

Q. Had you had discussions with him about the assignment of the Arrott patent to you previous to its assignment?

A. Only in so far as the general proposition was concerned.

Q. How many meetings had you had with him to discuss the general proposition, as you call it?

3 A. That would be very hard to say. I saw him several times between last summer and the time at which this agreement and assignment was entered into.

Q. By last summer you mean the summer of 1909?

A. Yes.

Q. Mr. Myler gave you his own shares of stock in the Standard Sanitary Manufacturing Company. What security did you give him?

A. 300 shares of stock of the Universal Electric Welding Company of New York City.

Q. Did you take any receipt from him?

4 THE WITNESS: From Mr. Myler?

Mr. GROSVENOR: Yes.

A. No, but he did send a receipt to the party from whom I did get the stock.

Q. And that was who?

A. Mr. Eugene Sloman, Detroit, Michigan.

Q. Is Mr. Sloman in any way connected with the Standard Sanitary Manufacturing Company? A. No.

Q. What is his business?

A. He is in the brokerage and real estate business, and formerly he was a business associate of mine in the Seamless Steel Bathtub Company, of which company he was manager and vice-president at one time. 1

Q. Did you have any correspondence with Mr. Sloman with regard to making this loan? A. No.

Q. Did you see him personally about the matter?

A. Yes.

Q. Where? A. In Detroit.

Q. You went out there for that purpose? A. Yes.

Q. On what day did Mr. Myler give you these 100 shares of Standard Sanitary stock? A. May 2. 2

Q. When did you send them to Mr. Sloman?

A. I did not send them to Mr. Sloman. I sent them to the People's State Bank that same day.

Q. On the same day you received them? A. Yes.

Q. Did you give Mr. Myler a receipt for them? A. No.

Q. Did he take a receipt for them?

A. No, I gave him the stock of the Universal Electric Welding Company in exchange.

Q. And he gave Mr. Sloman the receipt? A. Yes.

Q. Do you know if Mr. Sloman gave Mr. Myler a receipt for the stock? 3

A. No, but I think he acknowledged receiving it.

Q. By letter? A. Yes.

Q. Did Mr. Sloman take the shares of stock to the bank, or did you send them? A. I sent them.

Q. Why would he acknowledge receipt of the stock, then?

A. He acknowledged receipt of the stock which Mr. Myler sent him.

Q. Mr. Sloman acknowledged the receipt of the delivery of certain stock by you to Myler?

A. No, I beg your pardon; he acknowledged receipt of the stock which Mr. Myler sent him and which I had given Mr. Myler. 4

Q. Then Mr. Myler did not keep the stock which you turned over to him? A. Yes, he did.

Q. Then, why did Mr. Sloman acknowledge receipt of them if Mr. Myler kept them?

A. He acknowledged receipt of the stock which I delivered to Mr. Myler—you have your questions interspersed there—please separate them.

Q. You said that Mr. Sloman acknowledged receipt of those 100 shares of Standard Sanitary Manufacturing Company stock?

A. No, I did not. I beg your pardon, but I did not. Mr. Sloman, I believe, acknowledged receipt of a letter from Mr. Myler to the effect that I had delivered 300 shares of Universal Electric Welding Company's stock to him, or a letter to the effect that this collateral would be satisfactory for the stock which he loaned me. That is in short what the transaction was.

Q. He said this collateral would be satisfactory for the stock which he loaned to you? A. Yes.

Q. What collateral do you mean?

A. The Universal Welding Company's collateral.

Q. Which you had delivered—

A. Which I had delivered to Mr. Myler.

Q. What was the collateral on that, to which he referred in his letter?

A. The collateral he loaned in exchange for this.

Q. For what?

A. The Universal Welding Company's stock.

Q. What did he give you?

A. 100 share of the Standard.

Mr. GROSVENOR: Will you read the answer to the preceding question again, please?

The stenographer then read the answer to the question, as follows:

"A. No, I did not. I beg your pardon, but I did not. Mr. Sloman, I believe, acknowledged receipt of a letter from Mr. Myler to the effect that I had delivered 300 shares of Universal Electric Welding Company's stock to him, or a letter to the effect that this collateral would be satisfactory for the stock which he loaned me. That is in short what the transaction was."

Q. Have you a copy of that letter? A. No.

Q. Have you ever had a copy of it? A. No.

Q. You have seen a copy of it? A. Yes.

Q. Where did you see it?

A. When I say I saw a copy of it, I saw the original at the time.

Q. That is, Mr. Sloman's letter to Mr. Myler? 1
A. Yes, and Mr. Myler's letter to Sloman.
Q. Where did you see that correspondence?
A. In Mr. Myler's office.
Q. The bank received these 100 shares and gave you a loan of $7,000? A. Yes.
Q. Did they notify you? A. Yes.
Q. Then you drew three checks on that bank, is that right? A. Yes.
Q. One check for $5,000? A. Yes.
Q. Which you gave to whom?
A. The Standard Sanitary Manufacturing Company. 2
Q. Who was present then?
A. Mr. Myler and Mr. Torrance, when the papers were executed.
Q. The second check you gave to whom?
A. I will go back. Previous to giving a check to the Standard Sanitary Manufacturing Company I had mailed a check, together with the papers, to the L. Wolff Manufacturing Company, either on the second or third of May. The next check was the one which I gave the Standard Sanitary Manufacturing Company for $5,000.
Q. Now, the third check you gave to whom? 3
A. The J. L. Mott Iron Works.
Q. That was for how much?
A. $250, and a note for $250.
Q. And the check to Wolff was for how much?
A. $500.
Q. Any note with it? A. No.
Q. Have you paid since that time anything on your note to the Standard? A. No.
Q. They today hold your note for $5,000? A. Yes.
Q. Have you paid anything on your note to the Mott Company? A. No.
Q. They hold, then, today your note for $250? A. Yes. 4
Q. You bought a patent from the Cahill Iron Works about this time or a little after?
A. I bought an application for a patent.
Q. Did you draw a check on the same deposit?
A. No, I drew a check on my deposit in Pittsburgh on the Monongahela National Bank.
Q. For how much? A. $250.

1 Q. Have you repaid that loan which the bank in Detroit made to you? A. Yes.

Q. When did you pay that?

A. I paid part of it in July; I think I paid $2,000 at the time. I paid the balance some time in August.

Q. Of this year? A. Yes.

Q. Where did you get the money to do that? A. I had my own money.

Q. I mean from what?

A. From royalties collected from the licensees.

Q. In which bank do you keep your account of moneys
2 received on royalties? A. Two banks.

Q. Where?

A. People's State Bank of Detroit, Michigan, and the Monongahela Bank in Pittsburgh.

Q. Do you have a separate bank account for the moneys received from the licensees?

A. No, I have a bank account of my own.

Q. You put all moneys received into that one account?

A. Yes. I have only one account, my own account.

Q. You have two accounts, one here and one in Michigan? A. Yes.

Q. Have you any other bank accounts? A. No.

3 Q. You have stated on the record the names of those two banks? A. Yes.

Q. Now, during the time these license agreements were being prepared, both the manufacturer's and jobber's license agreements which are Exhibits 8 to 11, you were in conference with the attorneys, I believe? A. Yes.

Q. Who were the attorneys?

A. Bakewell & Byrnes, Pittsburgh, Christy & Christy, Pittsburgh, and Noble, Jackson & Hubbard of New York.

Q. And of Noble, Jackson & Hubbard, Mr. Jackson was the one with whom you had dealings, is that right.

4 A. Yes.

Q. When did you first meet Mr. Jackson?

A. I think about seven years ago.

Q. At what time?

A. It was some time in the winter on a visit from the Pacific Coast that I made to New York City.

Q. What business were you in at that time?

A. The electrical business.

Q. When did you first consult with Mr. Jackson with respect to these license agreements? 1

A. About the middle of March, 1910.

Q. Was that after or before you had prepared those printed forms and which are put in evidence as Exhibits 8 and 10? A. That was after I had prepared them.

Q. Did you suggest to Mr. Jackson that he address the meeting in March in New York City? A. Yes, I did.

Q. Do you know, as a matter of fact who was counsel for any of these corporation defendants before that time?

A. No.

Q. Have you retained any correspondence which you had with Mr. Sloman with respect to this loan? 2

A. I don't remember having any correspondence with respect to the loan.

Q. When did you first make an effort to obtain the loan?

A. About the latter part of August of last year. That was not directly an effort, but an intimation that I would probably call on him to help me out.

Q. That is to Mr. Sloman? A. Yes.

Q. How early in August?

A. Oh, it was the latter part of August.

Q. Did you confer with Mr. Ahrens, the president of the Standard Sanitary Manufacturing Company about this assignment of the Arrott patent to you previous to its assignment? 3

A. Only in so far as the general proposition was concerned.

Q. Did you ask him whether the Standard would be willing to make an assignment of the Arrott patent?

A. I asked Mr. Ahrens if the Standard would be willing to sell me the Arrott patent.

Q. What did he say?

A. He referred me to Mr. Dawes, inasmuch as he said that was a manufacturing proposition, and he would prefer to have Mr. Dawes talk to me about it. 4

Q. What did Mr. Dawes say?

A. Mr. Dawes was not in favor of the matter at all at first.

Q. When did he become in favor of it?

A. I think along about, possibly, the first of December.

Q. I show you a copy of a letter dated May 5, 1910,

and addressed to you by the Cahill Iron Works, and ask you if you remember receiving that letter, or such a letter.
A. Yes, I remember that.

Mr. GROSVENOR: I will offer that letter in evidence as Petitioner's Exhibit No. 71.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 71."

Mr. GROSVENOR: I will read that (reading):

"The Cahill Iron Works
Chattanooga, Tenn.

May 5, 1910.

To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburg, Pa.

Subject.

Mr. E. L. Wayman,
Pittsburg, Pa.

"Dear Sir:—

"We wrote you on yesterday, sending same by special delivery, c/o Noble, Jackson & Hubbard, Attorneys, New York; you gave no street number, but presume the letter reached you, or rather that it will reach you tomorrow morning when you are expected to be in New York. This letter states that at the present time indications were more favorable than they had been previously, as to our going into the arrangement, but that we could not say positively for a little while yet just what we would do."

Then there is some more of the letter which I will not read.

Q. Now, I show you a telegram addressed to you by F. H. Caldwell and dated May 6, 1910, and ask you if you remember receiving that? A. Yes.

Mr. GROSVENOR: I will offer that as Petitioner's Exhibit No. 72.

THE WITNESS: In answering that question I wish to say that that telegram has nothing to do what-

ever and has no bearing on the exhibit comprising a letter dated May 5 from the same company. 1

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 72."

Mr. GROSVENOR: I will read that telegram (reading): "May 6, 1910. Chattanooga, Tennessee. E. L. Wayman, New York. Everything favorable. Can answer positive one week. F. H. Caldwell."

Q. You were trying at that time to enter into a licensing agreement with the Cahill Iron Works? A. Yes.

Q. Had they indicated yet whether they would or not? A. Not positively. 2

Q. They state here that they could answer positively in one week. What did they mean by that? A. I don't know.

BY MR. GROSVENOR:

Q. I show you a letter dated May 7, 1910, addressed to you and signed F. H. Caldwell, and ask you if you remember receiving that letter? A. Yes.

Mr. GROSVENOR: I will offer that in evidence as Petitioner's Exhibit No. 73.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 73." 3

Mr. GROSVENOR: I will read that letter.

"Cahill Iron Works

"Eastern Branch
No. 76 West 36th St.
New York City.

Chattanooga, Tenn., U. S. A.
May 7, 1910.

"Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir,—Your two telegrams received, the first one reading as follows: 4

"'License matter will be concluded tomorrow shall I include your goods in price list now in printers hands if you are withholding answer on account of patents you expect to issue to your company will say I will pay you for patents on same basis I have purchased others from Standard, Wolff and Mott, wire answer Manhattan Hotel.'

"The second one:

"'Your letter and telegram favorably received licenses executed this morning mailing yours.'

"Of course you had my reply to your first telegram, which was that I could not positively decide, but indications were favorable. This is all I can add at this time. I am sure all the gentlemen connected, yourself included, will say that I have been perfectly consistent up to this time. I am perfectly candid when I say, that while I see quite a great many objections, which I suppose all the other gentlemen do, at the same time, there are objections in remaining on the outside and acting, to a certain extent, in the shape of an obstructionist. This we do not want to do, if we can prevent it. At the same time, there is still one obstacle to be overcome; how this will terminate we cannot say. If it is insurmountable, and we have to tell you that it is impossible for us to co-operate and be one of you you must not, and we do not believe can, consistently blame me.

"As soon as I know whether we can join, then, of course, I will get all the information obtainable to determine fully what to do. No doubt you have all the plans, either in printed form or in such form as you can send it to me. I will be glad for you to mail this to me upon receipt of this letter.

"You refer in your telegram to certain patents, on a dredger, which I will be pleased to take up with you. Of course it is not a question of money with us that we are trying to 'hold anybody up' or anything of the kind, but I feel satisfied we have some very decided advantages on that line that are not known to our competitors generally. Our Company wants to be perfectly reasonable in regard to these matters, and will be ready to take them up with you just as soon as the remaining party, referred to in our telegram this morning, reports.

"You certainly deserve credit for the persistency with which you have pushed this matter, and I can

say very freely that you deserve success in any event. 1

"Very resp'ly
"F. H. Caldwell. (Signed)"

Q. Now, I show you a copy of a telegram addressed by you to Mr. F. H. Caldwell and dated May 16, 1910, and I ask you if you recall sending that telegram? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 74.

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 74." 2

Mr. GROSVENOR: That reads as follows:

"Pittsburg, Pa.
May 16th, 1910.

"F. H. Caldwell,
c/o Cahill Iron Works,
Chattanooga, Tenn.

"Mr. Torrance received letter in which you state you had written me to come to Chattanooga. Have not received this letter. Can you not arrange to meet me in Cincinnati as I am handicapped for time compiling Price List which needs constant supervision to be out on time. Telegraph answer. 3

"E. L. Wayman."

Q. You had not yet at that time entered into an arrangement with Mr. Caldwell of the Cahill Iron Works?

A. No.

Q. How did you learn that Mr. Torrance had received a letter from Mr. Caldwell?

A. Mr. Torrance received a letter from Mr. Caldwell about meeting me in Chattanooga, but the letter miscarried.

Q. You were, then, conferring with Mr. Torrance at this time in reference to the Cahill Iron Works? A. No. 4

Q. How did you learn then, did Mr. Torrance telephone it to you?

A. I believe Mr. Torrance telephoned it to me.

Q. I show you a copy of a telegram dated May 29 and addressed to you. Will you tell me if you remember receiving such a telegram?

A. I remember receiving such a telegram.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 75.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 75."

Mr. GROSVENOR: I will read that:

"Chattanooga, Tenn., May 29th, 10.

"E. L. Wayman,
1403 Arrott Bldg., Pittsburg, Pa.

"Wire us when resale price will go into effect we thought there might be some delay send us new prices soon as possible. Mr. Caldwell will go to Louisville tomorrow night to meet Mr. Ahrens by his request on Tuesday.

"The Cahill Iron Works."

Q. Now, I show you a night letter telegram addressed to you by the Cahill Iron Works, and ask you if you recall receiving that?

A. No, this is the one which I did not have.

Q. What position did Mr. Caldwell hold in the Cahill Iron Works? A. President.

Q. I show you a letter from the Colwell Lead Company, and ask you if you received that, it is signed by Mr. Duryea? A. Yes.

Q. I show you the letter of February 14 addressed to you by Mr. J. T. Duryea dated March 15, 1910, and ask you if you recall receiving that letter?

A. Yes, sir; that is the one you just showed me.

Mr. GROSVENOR: I offer that letter as Petitioner's Exhibit No. 76.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 76."

Mr. GROSVENOR: I will read that letter:

"Colwell Lead Company
New York

"February 14th, 1910.

"Mr. E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

"Dear Sir:

"Replying to yours of the 10th, your reading of our letter of the 9th instant is entirely correct.

"We will not require any preferential below the lowest prices made by the Standard Sanitary Mfg. Co. 1

"Yours truly,
"Colwell Lead Company,
"JTD/BH "J. T. Duryea."

Q. Now, by preferentials there he means those manufacturers' preferentials allowed in the price agreement?

A. Yes.

Q. And this was the 14th of February, about a week after the circular letter which you testified you issued to the several manufacturers? 2

THE WITNESS: What circular letter was that?

Mr. GROSVENOR: Exhibit No. 12.

THE WITNESS: Does that letter refer to it?

Mr. GROSVENOR: This letter says: "Replying to yours of the 10th, your reading of our letter of the 9th instant is entirely correct. We will not require any preferential below the lowest prices made by the Standard Sanitary Manufacturing Company?

A. Yes, that refers to it.

Q. I show you a copy of a letter dated March 15, 1910, to you from Mr. Duryea, and ask you if you received that? 3

Mr. GROSVENOR: I offer that letter in evidence as Petitioner's Exhibit No. 77.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 77."

Mr. GROSVENOR: That letter reads as follows:

"March 15th, 1910.

"Mr. E. L. Wayman.

"Dear Sir: 4

"Yours of the 9th enclosing Memorandum of Agreement just received.

"In the abstract it looks good to me providing all manufacturers sign up,—however, I do not care to go on record regarding it until I have had an opportunity of going over it in detail with you, though of course we will be greatly influenced by what the other manufacturers do.

"I expect to be in my office about the 1st of April and will be glad to hear further from you.

"Yours truly,

"J. T. Duryea."

Q. Now I show you a copy of a letter dated January 11 and addressed to you by A. G. Ward of the Day-Ward Company, and I ask you if you recall receiving that letter from them? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 78.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 78."

Mr. GROSVENOR: The letter reads:

"The Day-Ward Co.
Warren, Ohio, Jan. 11th, 1910.

"To E. L. Wayman,
1509 Arrott Bldg.
Pittsburgh, Pa.

Subject

"Dear Sir:

"The writer has gone into the question of the proposed Agreement for Licensed Manufacturers quite carefully, and has obtained some advice on same.

"We are advised that this is legal, and there is no question but what it can be carried through all right. There are some questions, however, that would have to be settled, viz: the schedules and the differential in prices which would be allowed the different manufacturers. This, we suppose could be arranged satisfactorily to all parties concerned.

"There is one other part also which has not been touched upon, and which we think is very necessary, and that is the question of resale prices, the prices at which this material should be sold by the jobber to the plumber. These could be taken up and carried out.

"Aside from this, however, we would not care to have anything to do with it unless all the manufacturers of enameled ware were parties to the agreement. This, of course, includes The Standard Sani-

tary Mfg. Co. If they do not see their way clear to go into it, we think it would be better to let the matter drop. 1

"Yours truly,
"The Day-Ward Co.,
"Per A. G. Ward,
"W/F "F."

Q. I show you a letter dated January 12, evidently addressed by you to Mr. A. G. Ward, care the Day-Ward Company, Warren, Ohio, and ask you if you remember writing a letter about that date? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 79. 2

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 79."

Mr. GROSVENOR: That letter reads as follows:

"Jan. 12th, 1910.

"Mr. A. G. Ward,
c/o The Day-Ward Co.,
Warren, Ohio.

"Dear Sir: 3

"Replying to your letter of the 11th with reference to License Arrangement would state that most of the Companies are favorable to the matter on the same basis as you are, *i. e.*, provided the Standard Sanitary Mfg. Company becomes a party to the Arrangement.

"Since writing you I have been to Louisville where I took the matter up with Mr. Ahrens and Mr. Dawes. The matter appeals to them in several ways and while they have not given me any definite answer, I believe it strikes them quite favorably. I had in mind the resale price feature and am preparing some papers with reference to this end of it so that when the matter is taken up I will have ready considerable information and data with reference to it. 4

"I think the question of differentials in prices among the Manufacturers can be arranged satis-

1 factorily to all parties concerned provided it is decided to go ahead with the matter.

"Yours very truly,"

Q. Now, I show you a letter dated March 12 and addressed to you by the Day-Ward Company, per A. G. Ward, and ask you if you remember receiving that letter?

A. Yes.

Q. Then I show you a copy of the letter to A. G. Ward purporting to be from you and dated March 15, 1910, and ask you if you remember sending such a letter? A. Yes.

2 Mr. GROSVENOR: I offer the letter of March 12, 1910, from Ward to Wayman as Petitioner's Exhibit No. 80.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 80."

Mr. GROSVENOR: That letter reads as follows:

"The Day-Ward Co.
Warren, Ohio.

March 12th, 1910.

3 To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

Subject

"Dear Sir:

"Your letter of March 9th enclosing memorandum agreement arrived during the writer's absence. Would say that we will look this over. It has a great many good points, and we see no reason why this could not be drafted up and made to work satisfactorily.

4 "There is one point which has been left out, which the writer deems most important. That is the question of the orders which the manufacturers have on their books at present.

"Would say it will not be necessary for you to come to see the writer any particular time, but if you are in this part of the country, we wish you

would stop off, as there are several matters which we would like to talk over with you personally. 1

"Yours truly,

"The Day-Ward Company

"W/F "Per A. G. Ward (Signed)"

Mr. GROSVENOR: I will now offer the letter of March 15, 1910, to Mr. Ward in evidence as Petitioner's Exhibit No. 81.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 81."

Mr. GROSVENOR: The letter reads as follows: 2

"March 15th, 1910.

Mr. A. G. Ward,
c/o The Day-Ward Co.,
Warren, Ohio.

"Dear Sir:

"Replying to your letter of the 12th, I have secured the following signatures to the Memorandum of Agreement:

The McCrum-Howell Co.
Blairsville Enameled Ware Co. 3
National Sanitary Mfg. Co.
The Barnes Mfg. Co.
Standard Sanitary Mfg. Co.
L. Wolff Mfg. Co.
United States Sanitary Mfg. Co.
A. Weiskittel & Son Co.
The Humphryes Mfg. Co.
Union Sanitary Mfg. Co.

"I think the matter is now an assured success and I will arrange to see you some time the latter part of this week or possibly before that. I will 'phone you before hand so as to make sure that you are there. 4

"Yours very truly,"

Q. By the memorandum agreement referred to in that letter you mean the memorandum drawn up by you in March and which you testified you sent to some of the manufacturers and from others you obtained signatures?

1 A. The memorandum of agreement referred to in Mr. Ward's letter of March 12, is known as Exhibit 3, and I sent that to all the manufacturers containing the signatures I then had.

Q. This letter is a copy of a similar letter which you sent to the other manufacturers who did not sign?

A. That is right.

Q. About the time indicated? A. Yes, sir.

Q. I show you a letter dated April 7, addressed to Mr. A. G. Ward and purporting to be from you. Do you recall sending that letter out? A. Yes.

2 Q. Is that a copy of a similar letter addressed at the same time to the various manufacturers notifying them of the Mount Clemens meeting ? A. No.

Q. To whom did you send that notice of the Mount Clemens meeting?

A. I think to all the companies; that letter was sent to companies or firms from whom I received suggestions.

Q. You did, however, send notices to all the firms that there would be this meeting at Mount Clemens?

A. I think so.

Mr. GROSVENOR: I will offer that as Petitioner's
3 Exhibit No. 82.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 82."

Mr. GROSVENOR: That letter reads as follows:

"April 7th, 1910.

"Mr. A. G. Ward,
c/o Ward-Day Co.,
Warren, Ohio.

"Dear Sir:

"Replying to your letter of the 6th would state
4 that the Committee will start its session tomorrow at the Colonial Hotel, Mt. Clemens, Mich. If you think it advisable I am sure they would be glad to have you present to take up the matter in person. Your letter, however, is pretty clear on the matters you want and should any difficulties develop I will be glad to invite you to come to Mt. Clemens, if necessary.

"Yours very truly,"

Q. I show you four letters dated as follows: April 19, 1
which is a letter purporting to be a copy of a letter addressed by you to Mr. Ward. Do you recall sending that leter? A. Yes.

Q. I show you a letter of April 21, addressed to you by the Day-Ward Company and ask you if you recall receiving that letter? A. Yes.

Q. And the letter dated May 12 and addressed to you by the Day-Ward Company, do you recall receiving that?

A. Yes.

Q. And another letter addressed by you on May 16 to Mr. A. G. Ward; do you recall writing that letter? A. Yes. 2

Mr. GROSVENOR: I offer those four letters in evidence as Petitioner's Exhibits Nos. 83, 84, 85 and 86 respectively.

The letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 83, 84, 85 and 86" respectively.

Mr. GROSVENOR: I will now read Petitioner's Exhibit No. 83. (Reading):

"April 19th, 1910.

"Mr. A. G. Ward, 3
c/o The Day-Ward Co.
Warren, Ohio.

"Dear Sir:

"Replying to your letter of the 18th would state that Mr. Weiskittel and Mr. Gates appeared before the Committee and signed the Agreements.

"Mr. Kohler advised me that after a consultation with his Attorney that he will not become a party to the Arrangement.

"Yours very truly," 4

Petitioner's Exhibit No. 84 reads as follows:

"The Day-Ward Co.
"Warren, Ohio, April 21, 1910.

"To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburg, Pa.

"Dear Sir:

"We are returning communication from The McCrum-Howell Co., in regard to Hoy & Co.

"In regard to your letter W-4191001-1, would say we are very much disappointed that Kohler will not be a party to the agreement. We think we could get along without either Kohler or Iron City, but think it would be a great mistake to leave both of them out. Of the two, we would prefer to see Kohler in.

"Yours truly,
"The Day-Ward Co.
"Per A. G. Ward."

"W/F"

Petitioner's Exhibit No. 85 reads:

"The Day-Ward Co.
Warren, Ohio.

May 12th, 1910.

"To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburg, Pa.

"Dear Sir:—

"Will you kindly send the writer the list of the Manufacturers of Enameled Ware who have signed the resale agreement, and also the exact percentage of output as represented by them?

"Also advise whether or not any progress is being made toward getting the signatures of those who did not sign at the New York meeting.

"Yours truly,
"The Day-Ward Co.,
Per A. G. Ward."

"W/F

By Mr. Grosvenor: 1

Q. This letter dated May 12—the New York meeting referred to there is what meeting? A. Of May 6th.

Mr. Grosvenor: I will now read Petitioner's Exhibit No. 86 (reading):

"May 16th, 1910.

"Mr. A. G. Ward,
c/o The Day-Ward Co.,
Warren, Ohio.

"Dear Sir:

2

"Replying to your letter of the 12th would state that I have received word from the Cahill Iron Works to meet them in Chattanooga with reference to signing up. The Blairsville Company advise me that they will have a representative here tomorrow regarding the matter and I understand that the Iron City Company has told several of their large jobbers that they will enter into the arrangement if they say the word. I understand that they are saying it to them from all directions, and I have no doubt but that they will come along.

3

"Mr. Ahrens and Mr. Torrance saw Mr. Murphy and Mr. Kohler at Chicago Saturday, but did not obtain much satisfaction. Mr. Ahrens is still on the job and will return tomorrow, at which time I will write you further.

"Yours very truly,"

By Mr. Grosvenor:

Q. Now, were you at that Chicago meeting? A. No.

Q. How did you know Mr. Ahrens and Mr. Torrance were there? 4

A. I asked Mr. Ahrens to go there and see them; I don't know how Mr. Torrance got there.

Q. He was just butting in?

A. Whether he was in the city and just went there or what—I don't recall.

Q. I show you a letter dated February 14, from Howard

1 T. Gates and then ask you if you remember receiving that letter? A. Yes.

Mr. GROSVENOR: I offer that letter in evidence as Petitioner's Exhibit No. 87.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 87."

Q. I show you a letter of January 10, 1910, addressed to you and signed J. L. Mott, per E. Hammann, and I ask you if you remember receiving that letter? A. Yes.

Q. I show you a letter addressed by you to Edward Hammann dated January 12, 1910, and ask you if you re-
2 call writing that letter? A. Yes.

Mr. GROSVENOR: I offer those letters as Petitioner's Exhibits Nos. 88 and 89 respectively.

The letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 88 and 89," respectively.

Mr. GROSVENOR: I will now read Petitioner's Exhibit No. 87. (Reading):

"McCrum-Howell Co.,
"New York City, February 14th, 1910.
3 "Subject 'Resale Prices and Licenses Arrangement.'

"To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

"Your letter of February 7th received. We have no design patents, which I take it is what you want. We have some shop patents, however, if you want patents of that kind.

"Regarding the differential to be used over Standard's published prices, would suggest 5% on the regu-
4 lar guaranteed label goods—this to include Schedule #1 and #3, and 2½% on the Red and Black Label tubs. We will probably operate eight furnaces the balance of the year.

"This answers your letter of the 11th as well.

"Yours very truly,
"Howard T. Gates,
"Secretary."

"HTG-EMT"

Q. Now, that letter of the 7th of February of yours, to which he referred, was similar or dealt with the same subjects as are contained in Petitioner's Exhibit No. 12, is that not right? 1

A. Yes, the circular letter asking for a list of patents.

Mr. GROSVENOR: I will read Petitioner's Exhibit No. 88. (Reading):

"The J. L. Mott Iron Works,

"New York City, January 10, 1910.

"Subject: Prices and Legal Arrangement. 2

"To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

"Mr. E. L. Wayman,
Pittsburgh, Pa.

"Dear Sir:

"Since receiving yours of the 31st ult. the writer has been looking for the copy of the proposed Legal Arrangement that you sent some time ago but it must be mislaid. Will you kindly send another copy? 3

"Yours very truly,
"The J. L. Mott Iron Works,
"EH.AS." "E. Hammann."

Q. This letter is dated January 10 which I have just read, and it refers to your letter of the 31st ult.; the 31st ult. would be December 31, 1909. Do you recall sending a copy of the proposed "Legal Arrangement" at that time?

A. I am under the impression that that was a copy or outline of a proposed license agreement. 4

Q. That is earlier than the form which you sent two months later? A. Yes.

Q. That was then sent in December? A. Yes.

Q. Did you send that to the different licensed manufacturers?

A. I either sent it or handed it to them at different times as I had the opportunity.

1 Mr. GROSVENOR: I will read Petitioner's Exhibit No. 89. (Reading):

"January 12th, 1910.

"Mr. Edward Hammann,
c/o J. L. Mott Iron Works,
New York City.

"Dear Sir:

"Replying to your letter of the 10th I enclose you a duplicate memorandum of the papers that were forwarded to you. This is being considered favorably by the majority of the companies and I would be glad
2 to have your criticisms and suggestions as soon as practicable.

"The papers I am sending you will undoubtedly be subject to changes, but the idea in the main is given therein. The proposition would have to embody a resale price to the plumber to make it complete.

"Yours truly,"

Q. The resale price there referred to was finally adopted through the resale price-list which you issued, was it not?

A. Yes.

3 Q. I show you a letter dated April 29 and addressed to Mr. E. Hammann care of J. L. Mott Iron Works and ask you if you recall sending that letter?

A. Yes, and with the statement that the word "we" refers to my office force.

Mr. GROSVENOR: I offer that letter as Petitioner's Exhibit No. 90.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 90."

Q. Do you recall this letter of May 7 addressed to you by
4 Mr. Hammann? A. Yes.

Mr. GROSVENOR: I offer that letter in evidence as Petitioner's Exhibit No. 91.

Q. I show you a letter addressed by you to Mr. Hammann and dated May 10, 1910, and ask you if you recall writing that letter? A. Yes.

Mr. GROSVENOR: I offer that letter in evidence as Petitioner's Exhibit No. 92.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 92." 1

THE WITNESS: Yes, that recalls to my mind the memorandum which I made last evening where I desired to change my testimony with reference to the date when the license agreement was executed.

Q. That is the license agreement of the Mott Company?

A. Yes.

Q. On what date was it executed? A. May. 5.

Q. Then the answer should be changed to May 5?

A. Yes, the answer should be changed.

Q. To read what date? A. May 5. 2

Q. That changes the number signed on May 6 to how many? A. Thirteen.

Q. Here is another letter dated "On train, May 21st, 1910," and addressed to you and signed by Edward Hammann. Do you remember receiving that letter? A. Yes.

Mr. GROSVENOR: I offer that letter, then, as Petitioner's Exhibit No. 93.

The letter referred to was then marked and filed "Petitioner's Exhibit No. 93."

Q. I show you a letter dated May 26 and addressed to Mr. Edward Hammann and ask you if you remember sending that letter? A. Yes. 3

Mr. GROSVENOR: I offer that letter as Petitioner's Exhibit No. 94.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 94."

Mr. GROSVENOR: I will now read this letter which is Petitioner's Exhibit No. 90:

"April 29th, 1910. 4

"Mr. E. Hammann,
c/o J. L. Mott Iron Works,
New York City.

"Dear Sir:

"I have been unable to tell from your catalogs, what the list prices are without fittings. We are now making up the Price List on Licensed Ware and will you please have sent to me not later than the first of

the week, the following information on *all* your Enameled Iron Ware.

"List Price "Same as

Mott Plate No. Without fittings Standard Plate No.

Also in addition to the above information please include in your statement the *widths* of the Rims of your various makes of Enameled Iron Baths.

"Will you kindly put some one on this job so that I can have the information by the time asked for? I am sorry I could not have given you more notice.

"Thanking you in advance, I am,

"Yours very truly,"

Mr. GROSVENOR: I will also read Petitioner's Exhibit No. 91:

"On train near El Paso, May 7th, 1910

"Mr. E. L. Wayman,
"Pittsburg.

"Dear Sir:

"By this time I trust your long siege is over and that at your meeting in N. Y. this week final arrangements were consummated—sorry I could not be present.

"I will be in Old Mexico for about ten days and when I come out will want to know what is going on in our bus. world. Will you kindly send me, care Higgins Co., San Antonio, Texas, a copy of the Mfrs. Agreement (License) and the Jobbers Agreement with resale prices; I want to study them and issue the necessary bulletin to our branches and salesmen. Make my name on the envelope *very* large and plain so the H Co. will not open it by mistake; also put on the envelope 'to arrive.'

"A letter from you telling me the 'news' and items of interest will be welcome.

"Yours sincerely,

"Edward Hammann."

Petitioner's Exhibit No. 92 reads as follows: 1

"May 10th, 1910.

"Mr. Edward Hammann,
"c/o Higgins & Co.,
San Antonio, Texas.

"Dear Mr. Hammann:

"I was very glad to receive your letter of the 7th, written on the train near El Paso.

"We had our meeting, Friday of last week in the offices of Noble, Jackson & Hubbard, where we consummated the deal and signed the License Papers. 2 Your company could not have a representative on hand but greatly facilitated matters by transferring the patents to me, the day previous to the meeting, as well as executing the License Agreement.

"I enclose you copy of the License Agreement together with a copy of the Jobbers Agreement which may have some changes in it before it is finally issued.

"We think, possibly, that it might be well to have a meeting of all the salesmen sometime before the 1st of June, so that they may thoroughly understand the matter in detail and be able to re-tell it to the 3 jobbers in the manner it should be told."

Q. You mean there the salesmen of all licensed manufacturers? A. Yes.

Q. That is, they were to gather together and receive instructions as to how the provisions were to be carried out?

A. They were to gather together in my office so that I could instruct them in the meaning of the various details and paragraphs and how to figure prices, and give them general information on the subject.

Q. And the rules were to be the same for all the salesmen? A. Yes. 4

Q. Irrespective of which manufacturers they were connected with? A. Yes.

Q. (Reading): "We are now busy making up the Price List (I have six people besides myself working on it) and will be able to get everything out covering all the staples by June 1st. Sheets covering special material will follow as rapidly as possible.

"We all missed you very much, but inasmuch as you

were with us in spirit, it was some better than one or two people who were neither.

"Every one feels very enthusiastic about the matter and I believe it will be a success.

"As soon as you get time, I would appreciate a line from you.

"Yours very truly,"

Mr. GROSVENOR: Petitioner's Exhibit No. 93 reads as follows:

"On Train, May 21st, 1910.

"Dear Mr. Wayman:—

"Many thanks for yours of the 10th inst. and the copies of license and Jobbers Agreement.

"The list of mfrs. in the Jobbers Agreement includes Kohler and Iron City, which means, I take it, that the united efforts to draw them into the fold were successful; if so Mr. Jackson will be quite satisfied with the percentage of mfrs. represented.

"Discounts from resale prices— Why were these so materially reduced? Will the jobbers be content with 7½ and 5% and 5 & 5%?

"Price list— The preparation of this must be a huge task. May I ask you to send me, as much before June 1st as possible, a copy of the resale prices? I want to prepare our bulletin of instructions for branches and salesmen.

"You refer to 'a meeting of all the salesmen some time before June 1st.' How comprehensive will this meeting be and where held?

"I will be in Chicago Monday and Tuesday morning, c/o The J. L. Mott Iron Works, and in New York Wednesday.

"Yours truly,

"Edward Hammann."

Petitioner's Exhibit No. 94 reads:

"May 26th, 1910.

"Mr. Edward Hammann,
c/o J. L. Mott Iron Works,
New York, N. Y.

"Dear Sir:

"Replying to that part of your letter of the 21st

with reference to the margin of profit to the jobber. This figures from 17 to 21%, depending on the class of goods he purchased, as well as the quality. Full information regarding all the details will be sent you the same time as it is sent to the other companies. 1

"Yours very truly,"

Q. I show you a telegram which appears to have been sent on the Postal-Telegraph Commercial Cable, and signed, Francis J. Torrance, and sent to you. Do you recall receiving that telegram? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 95. 2

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 95."

Q. I show you a letter dated May 19th with the single word "Standard," and ask you if you recall sending that letter? A. Yes.

Mr. GROSVENOR: I offer that as Petitioner's Exhibit No. 96.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 96." 3

Mr. GROSVENOR: I will read this telegram which is marked "Petitioner's Exhibit No. 95." (Reading):

"Telegram.

"Postal Telegraph Commercial Cables.
"Received at
236 Fourth Ave., Phone 407 Court.
"137 G. W. 15 451p
"New York, May 19, '10.
"E. L. Wayman, 4
1500 Arrott Blg., Pgh.
"Kindly mail special delivery our Boston, New York and Phila. offices copies Jobbers agreement for Resale.

(Signed) Francis J. Torrance."

Q. As to the jobbers' agreement for resale there is

1 meant the agreements which the various licensed manufacturers entered into with the jobbers, is that right?

A. Not finally.

Q. What is meant, then?

A. The jobbers' license agreement which existed at that time.

Q. And which had already been considered? A. Yes.

Mr. GROSVENOR: Now I will read Petitioner's Exhibit No. 96. (Reading):

"W.-5191008-I

"May 19th, 1910.

2

"*Standard*

"In reply to a telegraphic request from New York by Mr. Torrance I enclose you herewith, copies in duplicate of the Jobber's Agreement. I am unable to send you a copy that will be finally adopted as these will not be out until next week, but the final copy will be substantially the same as the enclosed with some minor changes.

"The amount of rebate based on purchases still has to be determined for the various quantities. In

3 talking with any of the Jobbers please do not let these papers get out of your possession and return them to me as soon as you receive the revised copies. The discounts named on the first page have been reduced to 5%, inasmuch as this difference will exist in the Resale sheets between Carload and less than Carload Prices.

"Yours very truly,"

Q. That means the jobbers buy at carload prices and sell at less than carload prices?

A. Yes, if their sales are less than carloads.

4 Q. But, they buy at carload prices?

A. If they buy in carloads they do, and if not, then at less than carload prices.

Q. From all the manufacturers?

A. With the exception of manufacturing points.

Q. And what governs there?

A. Carload prices in any quantity.

Q. What are the manufacturing points?

A. Pittsburgh, Allegheny, New Brighton, Monaca.

Q. Where is Monaco? A. Pennsylvania. 1

Q. What factory is there?

A. The United States Sanitary Manufacturing Company; then, Zelienople, Pennsylvania; Baltimore, Maryland; Braddock, Pennsylvania; Chicago, Illinois; Cincinnati, Ohio; Elizabeth, New Jersey; Louisville, Kentucky; Mansfield, Ohio; Milwaukee, Wisconsin; Noblesville, Indiana; Salem, Ohio; Trenton, New Jersey; Uniontown, Pennsylvania; Warren, Ohio; Wheeling, West Virginia.

Q. Now, I show you a letter dated February 12, 1910, addressed to you and signed, L. C. Huesmann; what company is he associated with? 2

A. The Union Sanitary Manufacturing Company.

Q. Do you recall receiving that letter? A. Yes.

Mr. GROSVENOR: I offer that letter in evidence as Petitioner's Exhibit No. 97.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 97."

Q. I show you a letter dated February 22nd and signed by the Union Sanitary Manufacturing Company, per C. E. Gates, Second Vice-President and General Manager, and ask you if you recall receiving that letter? A. Yes. 3

Mr. GROSVENOR: I offer that letter in evidence as Petitioner's Exhibit No. 98.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 98."

Mr. GROSVENOR: I will read this letter which has been offered in evidence as Petitioner's Exhibit No. 97. (Reading):

"Union Sanitary Mfg. Co.,
Noblesville, Ind.
Indianapolis, Ind., Feb. 12, '10. 4

"Mr. E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

"Dear Sir:—

"Have your favor of the 11th inst. and wish to say in reply thereto—no doubt Mr. Gates will take this

matter up with you in reference to Patents and Preferential Discounts.

"Hoping that this will be satisfactory, remain

"Yours very truly,

"LCH" L. C. Huesmann."

Q. Who is Mr. Gates? A. He was the general manager.

Q. And the preferential discounts there are the manufacturers' special discounts? A. Yes, sir.

Q. And did Mr. Gates subsequently appear before the price and schedule committee? A. Yes.

Q. And this letter referred to your letter of the 11th, which is a letter similar to Petitioner's Exhibit No. 12, is it not? A. I believe it is.

Mr. GROSVENOR: I will read Petitioner's Exhibit No. 98. (Reading):

"Union Sanitary Mfg. Co.,
Noblesville, Ind.,
February 22nd, '10.

"Dear Sir:—

"Referring to your favor of the 7th, will state that we have no patents that would be of any benefit to any one.

"Regarding the preferential discount we are willing to secure the Standard Sanitary Mfg. Co.'s prices. Not their published prices but their actual prices on all ware.

"We expect to operate six furnaces during this entire year. We are now using four.

"Very truly yours,
"Union Sanitary Mfg. Co.,
Per C. E. Gates,
2nd Vice-Pres. & Gen'l. Mgr."

Q. I show you what appears to be a circular issued by you on May 11, 1910. Do you recall sending out that circular? A. Yes.

Q. Did you send it to all the licensed manufacturers?

A. In so far as I recollect, yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 99.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 99." 1

Q. I show you another letter of June 6, 1910, and addressed "To the Licensees." Do you recall sending that letter? A. Yes.

Mr. GROSVENOR: I offer that letter as Petitioner's Exhibit No. 100.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 100."

Q. I show you another circular dated May 11, and referring to copies of the resale price list and ask you if you recall sending that out? A. Yes. 2

Mr. GROSVENOR: I offer that paper as Petitioner's Exhibit No. 101.

The paper referred to was then marked and filed as "Petitioner's Exhibit No. 101."

Q. I show you a letter dated May 29, 1910, which appears to be a circular letter issued by you to the different licensees and referring to the meeting of manufacturers' salesmen to be had in Pittsburgh on Saturday, June 4, at your office. Do you recall sending that out? A. Yes. 3

Q. And that letter called the meeting in respect to which you testified a few minutes ago? A. Yes.

Mr. GROSVENOR: I offer that as Petitioner's Exhibit No. 102.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 102."

Mr. GROSVENOR: I will now read these exhibits. Petitioner's Exhibit No. 99 reads as follows:

"Edwin L. Wayman
Arrott Building
Pittsburgh 4

W-5111005-I
"May 11th, 1910.

"Under your license you will be required after June 1st to place a Label on every piece of ware shipped out, which will read approximately as follows:

1 "'This fixture is manufactured under the following United States Letters Patent.'

"Date. Serial Number.

"Kindly advise me by return mail how many of these Labels you will want in your first supply. They will come in the shape of rolls and perforated so that they may be torn off like stamps.

"Thanking you for a prompt reply, I am,

"Yours very truly,"

Petitioner's Exhibit No. 100 reads as follows:

2 "Edwin L. Wayman
Arrott Building
Pittsburgh

W-661011-I
June 6th, 1910.

"To the Licensees:

"Kindly advise me if you have received your License Labels and if you are using them. These Labels should be on all Ware manufactured after June 1st.

"Yours very truly,

3 "Licensor."

Petitioner's Exhibit No. 101 reads:

"W-5111001-I
May 11th, 1910.

"Will you kindly advise me by return mail how many copies of the Resale Price Book you will require for your salesmen and office use? I will send from this office the necessary copies to the Jobbers so that in naming your quantity, you need not take into consideration your customers requirements.

4 "Yours very truly,"

Petitioner's Exhibit No. 102 reads as follows: 1

"Edwin L. Wayman
Arrott Building
Pittsburgh

W-5291003-I
May 29th, 1910.

Salesmen's Meeting

"To the Licensees:

"It was suggested some time ago that just previous to the time that the Resale matter would take 2
effect that there be held a General Meeting of the Manufacturers' Salesmen and the details thoroughly explained to them; lack of time has thus far prevented this.

"In view of the fact that we now have an extra week's time, I would personally like to have the various Manufacturers' Salesmen meet me in Pittsburgh on Saturday, June 4th for the following reasons.

"It is almost impossible to thoroughly explain the matter to both Jobber and Salesman in any printed 3
matter that may be issued. I have tried to cover all points in the printed matter I have prepared, but the salesmen will be undoubtedly asked a lot of questions that they should be able to answer in the proper way.

"I have talked with several Jobbers who were absolutely opposed to the proposition in general but after the matter was thoroughly explained to them they became very enthusiastic. I would, therefore, like to have the individual salesmen know the story from A to Z and be prepared to re-tell it to their 4
Jobbers with a complete knowledge of the situation and in a convincing manner.

"Most of the salesmen do not know each other and I believe if they did know each other it would help to promote better harmony and enable them collectively to present this matter to the Jobbers in a better way than is possible under the present circumstances.

"Will you kindly telegraph me upon receipt of this

letter if you can have your salesmen in Pittsburgh Saturday so that I can make the proper arrangement to take care of them? Upon receipt of the replies, I will advise you definitely regarding the details.

"Yours very truly,

"Licensor."

Q. I show you two circulars addressed to the jobbing trade on your letterheads; one is addressed to Mr. F. J. Torrance, care of the Standard Manufacturing Company, is it not? A. Yes.

Q. They are dated May 28 and May 29, respectively. Do you recall sending them? A. Yes.

Q. You testified yesterday that these circulars were sent to the different licensed manufacturers, is that right?

A. Yes.

Q. The name F. J. Torrance appearing on these two circular letters indicates that these were sent from your office to the Standard Manufacturing Company? A. Yes.

Q. You produced them before on subpœna and you also produce them now? A. Yes.

Mr. GROSVENOR: I offer these circular letters as Petitioner's Exhibits Nos. 103 and 104, respectively.

The papers referred to were then marked and filed as "Petitioner's Exhibits Nos. 103 and 104" respectively.

Q. I show you a copy of a letter dated June 10, 1910, and addressed to The Western Supply Company, St. Paul, Minnesota, which was produced by counsel, and I ask you if that is a copy of a letter written by you to them and mailed on that date? A. Yes, sir.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 105.

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 105."

Q. I show you a telegram addressed by you to the Atlas Supply Company, Muskogee, Oklahoma, dated June 17, 1910, and ask you if you remember sending them that telegram? A. Yes.

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 106.

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 106." 1

Q. I show you another letter addressed by you to the Atlas Supply Company and dated June 22, 1910, and ask you if you remember writing them that letter? A. Yes.

Mr. GROSVENOR: I offer that as Petitioner's Exhibit No. 107.

The letter referred to was marked and filed as "Petitioner's Exhibit No. 107."

Mr. GROSVENOR: I will now read Petitioner's Exhibit No. 105: 2

"W-6101008-R.

"June 10, 1910.

"The Western Supply Co.,
St. Paul, Minn.

"Gentlemen:

"Replying to your letter of the 7th, it is impossible for me to give you permission to continue buying goods from the J. M. Kohler Sons Co., Sheboygan, Wis. This Company has been invited to execute a license agreement and use the patents of process, 3 but has not seen fit to do so. I would like to have them execute an agreement, but if they will not it is impossible to concede to any of their customers the right to purchase their goods if the customers desire to purchase licensed ware.

"I hope that you will take the matter up with them and try and convince them that they should manufacture goods in accordance with the other Companies.

"Yours very truly,

"Licensor." 4

I will also read Petitioner's Exhibit No. 106:

"Pittsburgh, Pa.,
"June 17th, 1910.

"Atlas Supply Co.,
Muskogee, Okla.

"If you will sign license agreement will authorize you to handle Kohler ware subject to resale terms

for a reasonable length of time with understanding that you will at once decrease your purchases and stock licensed ware and further sale of it and furnish me monthly statement of purchases from Kohler. Licensed Manufacturers desire to give all assistance possible to jobbers in order that they may make a fair margin of profit and do not desire to inflict any hardships but do believe they merit the support of all jobbers in this proposition. Southwest, Kansas City Pump, Young and Crane are supporting Licensed Manufacturers Reeves wires he has put resale into effect and intends to sign. Expect US Water will sign today. Wire answer.

"E. L. Wayman."

Q. What is "Southwest?"

A. That refers to the Southwest Plumbing Supply Company of Kansas City, that is the name of a jobber.

Q. What is "Kansas City Pump?"

A. That is the Kansas City Pumping and Supply Company.

Q. Who is "Young?"

A. That is W. B. Young Supply Company.

Q. And Crane? A. That is the Crane Company.

Q. Where are they located?

A. In Chicago and other places.

Q. They handle sanitary enameled iron ware and sell it throughout the west? A. Yes, all over the country.

Q. Would they be in competition with the Atlas Supply Company. A. Yes.

Q. Where is Reeves? A. In Kansas City.

Q. Would he come in competition with the Atlas Supply Company? A. Yes.

Q. (Reading): "Expect US Water;" who is the U. S. Water? A. That is a company in Kansas City.

Q. Are these names all names of prominent and large jobbers?

A. I would not consider them all large jobbers.

Q. Is there any larger jobber than Crane?

A. No, not collectively, but individually.

Q. You mean that Crane has a large number of branches?

A. Yes.

Q. Where are they?

A. In the principal cities, I could not say without referring to a printed list. 1

Q. Just point out in this blue book where they are?

A. Los Angeles, California; Oakland, California; San Francisco, California; Washington, District of Columbia; Atlanta, Georgia; Chicago, Illinois—that is the main office —Muncie, Indiana; Des Moines, Iowa; Sioux City, Iowa; Wichita, Kansas; Baltimore, Maryland; Boston, Massachusetts; Duluth, Minnesota; Minneapolis, Minnesota; St. Paul, Minnesota; Kansas City, Missouri; St. Louis, Missouri; Omaha, Nebraska; Fargo, North Dakota; Cincinnati, Ohio; Muskogee, Oklahoma; Oklahoma City, Oklahoma; 2 Portland, Oregon; Philadelphia, Pennsylvania; Watertown, South Dakota; Memphis, Tennessee; Dallas, Texas; Salt Lake City, Utah; Seattle, Washington; Spokane, Washington; Tacoma, Washington.

Mr. GROSVENOR: I will read Petitioner's Exhibit No. 107, which was a letter addressed to the Atlas Supply Company and dated June 22nd, 1910. (Reading):

"W-6221021-I

"June 22nd, 1910. 3

"Atlas Supply Company,
Muskogee, Okla.

"Gentlemen:—

"Answering your letter of the 18th, would state that if you will sign the Jobbers' License Agreements, I will authorize you to continue purchasing Kohler's Ware as outlined in my telegram of the 17th, with the understanding that you maintain the Resale Prices. Will you kindly acknowledge receipt of this letter? 4

"Yours very truly,"

Q. Have you retained your other correspondence with the Atlas Supply Company with reference to the signing of the contracts? A. I think so.

Q. Have you retained your correspondence with the Western Supply Company with reference to executing jobbers' license agreements? A. I think so.

Q. Will you produce that correspondence tomorrow?

A. Yes. May I amend an answer which I made?

Mr. GROSVENOR: Yes, what is it?

THE WITNESS: I wish to say that this is a copy of a letter which I addressed to the Western Supply Company under date of June 10, and the words "but if they will not, it is impossible to concede to any of their customers the right to purchase their goods if the customers desire to purchase licensed ware," that having been written in error.

Q. How ought it to read?

A. Well, it is not a truthful statement. I don't know what I might have said, but that is not a correct statement.

Q. Did you correct the original before you let it go out of your office?

A. No, but I corrected it later in talking with Mr. Sullwold.

Examination Suspended.

The taking of testimony was then adjourned to the third day of November, 1910, at ten o'clock a. m., at the same place.

Pittsburgh, Pennsylvania,
November 3, 1910.

Pursuant to adjournment the evidence for the Petitioner was resumed as follows, with same counsel present.

EDWIN L. WAYMAN, a witness heretofore produced and sworn, resumed the stand for continuation of direct examination and testified as follows.

DIRECT EXAMINATION (continued):

THE WITNESS: Yesterday you asked me a question with reference to a letter written by Mr. Sloman to Mr. Myler of the Standard Sanitary Manufacturing Company with reference to 300 shares of Universal Electric Welding Company's stock, and also with reference to a receipt sent by Mr. Myler to Mr. Sloman acknowledging receipt of this stock. I wish to com-

plete my answer of yesterday by reading these letters. 1

Mr. GROSVENOR: Let me look at them first. You can bring this all out on cross examination. You can introduce these letters in your own case without any objection from me. I don't see why they should come in here.

THE WITNESS: I should like to place them on the record now if you have no objection.

BY MR. GROSVENOR:

Q. Did you offer this electric stock to the People's Bank in Detroit as security for the loan? A. No. 2

Q. Was it necessary to have Standard stock as security for the loan?

A. It was necessary to have some stock whose value was recognized and known.

Q. With what officer of the bank did you conduct your business?

A. Mr. George H. Russell, president, a gentleman whom I have known for ten years and who was a stockholder in the Seamless Steel Bathtub Company, a concern with which I was formerly associated, his son having been secretary and treasurer of that concern and a very close friend of mine. 3

Q. Did you go to the bank before you offered the Standard stock?

A. Not until I had discussed the matter with Mr. Sloman.

Q. Did you offer to deposit the electric stock as security? A. No.

Q. Did the president tell you that you should give Standard stock? A. No.

Q. Where is that Standard stock now?

A. Mr. Myler has it.

Q. When was it returned to him? A. About August 20. 4

Q. 1910? A. Yes.

Q. That is the time when you paid your loan? A. Yes.

Q. And then the electric stock was returned as these papers show to Mr. Sloman?

A. Not at that time, Mr. Myler was away at the time, but he returned the stock when he returned. In other words, Mr. Myler had his Standard stock back some time before the electric stock was returned to Mr. Sloman. I

would like to offer these letters in evidence and place them on the record.

Mr. NOBLE: Counsel for defendants ask counsel for the Government to accede to the request of the witness that the letters which he has referred to, being dated April 29, 1910, and addressed to Mr. W. A. Myler, Pittsburgh, Pennsylvania, and signed by Mr. Eugene H. Sloman, and a receipt dated April 29, and signed by Mr. Wayman reciting the receipt from Eugene H. Sloman of Certificate No. 1030 of 300 shares of Universal Electric Welding Company's stock and the endorsement on the back thereof, likewise dated April 29, 1910, and signed by E. L. Wayman, and the letter dated May 2, 1910, addressed to Mr. Eugene Sloman, Detroit, Michigan, and signed by Mr. W. A. Myler, acknowledging the receipt of Mr. Sloman's letter of April 29, together with the certificate of Universal Electric Company's stock referred to, be read on the record now, they being the same papers which were held in the hands of counsel for the Government when he asked the witness, Wayman, the preceding questions as to what these papers show, saying, "as these papers show," and so forth. Counsel asks that they be read upon the record as requested by the witness at this time to complete his answers to certain questions asked him yesterday.

Mr. GROSVENOR: Counsel for the Government objects to the introduction of these papers now, although he is willing that they should be put in as part of the defendant's case and does not wish his record to be encumbered by these papers, the witness having testified yesterday as to the facts contained therein.

Mr. NOBLE: Counsel for defendants says in reply that it is evident that counsel for the Government is not willing to have his own witness complete his answers as requested by the witness in order that all the facts may more clearly appear upon the record with respect to the interrogatories addressed to the witness by counsel for the Government and the transactions referred to therein and in respect there-

to, and asks that the letters mentioned be marked for identification at this time. 1

Mr. GROSVENOR: Under the rules of procedure before the Examiner, the stenographer, of course, will write out these letters on the record, the objection of counsel for the Government being noted.

THE WITNESS: This letter is written on the letterhead of the St. Clair Heights Syndicate, Limited. It is dated, Detroit, Michigan, April 29, 1910, and reads as follows:

"Mr. W. A. Myler,
Pittsburgh, Pa. 2

"My dear Sir:

"Mr. E. L. Wayman was in to see about a subject we had often discussed while associated with the Seamless Steel Bath Tub Company, namely, all of the Patents owned by the Standard Sanitary Mfg. Co. and others used in the economical manufacturing of Enameled Ware, as I understand it he has negotiated far enough along so that now it becomes a question of money to carry out his plan. It is my disposition to help him, both financially and otherwise as our relations have been such that brotherly feeling exists between us. On account of my experience and negotiations in Seamless and Real Estate I have used up the limit of my credit at our local bank till I begin to realize on properties and securities I own. Consequently I cannot borrow on collateral, even which ordinarily they would accept from me or any of their customers. Therefore in order to assist Mr. Wayman I would like to deposit with you certain stock collateral namely, Universal Electric Welding Company of New York, certificate for which I have given to Mr. Wayman in exchange for which you could loan him an amount of priced or quoted stock on which he could borrow an amount equal to his needs of the banks here in Detroit. He will explain to you the method and manner by which this can be accomplished as we have both gone over the situation carefully. I am in hopes to have the actual money at a later date and will then pay his obligation and retire any collateral that may be used for 3 4

his purpose and benefit. The stock I am loaning Mr. Wayman has a value of about $75.00 per share and will increase as Mr. Wayman is aware of on account of advantageous royalty contracts they have. By assisting Mr. Wayman in the premises you will be doing him a favor without risk to yourself, which I will very much appreciate and hope to be able to reciprocate at some future period.

"Awaiting your decision, believe me,

"Most sincerely,

"Eugene H. Sloman."

Mr. NOBLE: Mr. Stenographer, will you mark that Exhibit No. 4 for identification, and note that it is offered by counsel for defendants.

The letter referred to was then marked as Exhibit No. 4 for identification, offered by counsel for defendants.

BY Mr. GROSVENOR:

Q. Did Mr. Myler suggest to you that he should loan you Standard Sanitary Manufacturing stock? A. No.

Q. You went and asked him for it? A. Yes.

Q. When did you go? A. May 2nd, the day I got it.

Q. Was any one there at the time? A. No.

Q. Did you ask him for any other stock? A. No.

Q. You specified Standard Manufacturing Company stock? A. Yes.

Q. Did any one suggest to you that you should have Standard Sanitary Manufacturing Company stock in making the loan? A. No.

Q. Did the bank at Detroit refuse to accept the Electric Company's stock as security for the loans?

A. I did not offer it to them.

Q. If Mr. Myler was willing to accept it, what made you think that the bank would not accept it?

A. On account of Mr. Sloman being heavily over-borrowed at the bank. Mr. Sloman suggested that would be the fact if I offered it to the bank.

Mr. GROSVENOR: That is all on that point.

The witness then read Exhibits Nos. 5, 6, 7 and 8 marked for identification at request of counsel for defendants.

THE WITNESS: Exhibit No. 5 for identification reads as follows: 1

"Detroit, Mich., April 29th, 1910.

"Received of Eugene H. Sloman Certificate No. 1030 for 300 shares of Universal Electric Welding Co.'s stock which I am using for the purpose of obtaining a loan on, which money I propose using to purchase certain enamel ware patents which will afterwards be leased out on royalty and I hereby agree out of the first money available to pay such loan as I may have negotiated and return said stock to said Eugene H. Sloman at the earliest date. 2

"E. L. Wayman."

Exhibit No. 6 for identification reads as follows:

"April 29th, 1910.

"I hereby agree and consent that the value at present of this stock is $75.00 per share, for which I obligate myself if the stock is not returned within seven (7) months from date.

"E. L. Wayman." 3

Exhibit No. 7 for identification reads as follows:

"Pittsburgh, U. S. A., May 2, 1910.

"Mr. Eugene H. Sloman,
Detroit, Mich.

"Dear Sir:

"Your letter of April 29th together with certificate of Universal Electric Co. #1030 for 300 shares of stock in the name of Maurice Lachman, and endorsed in blank by him, has been handed to me by Mr. Wayman, and is satisfactory as per your letter. 4

"Yours truly,

"W. A. Myler."

Exhibit No. 8 for identification reads as follows:

"Detroit, Mich.,
Aug. 20th, 1901.

"Mr. W. A. Myler,
Pittsburgh, Pa.

"Dear Mr. Myler—

"Enclosed herewith I am enclosing to you Certificate D 230 for 100 shares of Standard Sanitary Mfg. Co.'s stock upon which my loan here in Detroit was negotiated, which I have paid today in full. Mr. Sloman being with me and he requests at your early convenience that you return to him the certificate for 300 shares of the Universal Electric Welding Co.'s stock deposited with you. He desires me to express to you his appreciation of the favor shown and it is needless to say that I add my own.

"With kindest regards, I am,

"Yours truly,

"E. L. Wayman."

"P. S. For safety I am sending this via express."

BY MR. GROSVENOR:

Q. Mr. Wayman, the earliest exhibit or paper which we have so far introduced which in any way embodies certain of the terms of the licensing agreement, is the memorandum which you have testified you drew up on March 2nd after that meeting in Chicago?

A. Yes, in so far as it relates to a preliminary agreement that the various companies would execute some final license agreement form.

Q. Counsel for the defendants referred to you this morning as a witness for the Government, you having been called by the Government. You are a defendant in this case, are you not? A. Yes.

Q. You have been how many days on the witness stand?

A. Three.

Q. Do you confer with your own counsel every day?

A. No, not in detail.

Q. You see your own counsel every day outside of these sessions? A. At lunch.

Q. Just answer yes or no. A. Yes. 1

Q. You came to Court with counsel this morning?

A. Yes.

Q. You came to Court with counsel yesterday morning?

A. Yes.

Q. You came to Court with counsel the morning before?

A. Yes.

Q. Each day you have come to Court with counsel?

A. Yes, with the exception of yesterday; I did not come with counsel yesterday.

Q. Do you go to lunch with counsel? A. Yes.

Q. You spent the lunch hour with your counsel? 2

A. Yes.

Q. You have done so every day? A. Yes.

Q. Between the periods of examination by counsel for the Government here? A. Yes.

Q. During the days of examination by counsel for the Government have you gone over with your own counsel some of the details of the license agreement?

A. In so far as suggesting to my counsel certain points and asking him to bring them out to illustrate certain facts.

Q. You have been in daily consultation with him?

A. Yes. 3

Q. As to your side of the case? A. Yes.

Q. Your theory of the case?

A. No, the facts in the case.

Mr. GROSVENOR: I meant no insinuation or implication. I simply meant your theory of the law.

Mr. NOBLE: Counsel for defendants states that he has no objection to counsel for the Government inquiring of Mr. Wayman as to any or all the facts, or as to the fact that during the days referred to Mr. Wayman and the counsel for the defendants have been together from time to time, unless it is 4 intended thereby to suggest something reflecting upon the witness, Mr. Wayman. If so, counsel requests that the questions and answers just given should be so considered.

Mr. GROSVENOR: Counsel for the Government means no reflection upon either the defendant in this case or his counsel, in referring to these conferences. His only object is to bring out the fact

1 that the witness is a defendant and not in reality the witness of the prosecution as was stated previously, except as subpœnaed by the Government.

THE WITNESS: The witness further wishes to state that he has a perfect right to do this, inasmuch as the counsel for the Government has conferred with his witnesses.

BY Mr. GROSVENOR:

Q. Now, Mr. Wayman, going back to our March 2 memorandum of agreement, which you state you drew up on
2 that day, you have already stated that you had earlier memorandums of the proposed license agreement? A. Yes.

Q. And those you tore up? A. In so far as they—

Q. Just answer yes or no: Did you tear them up?

A. Yes.

Q. Now, I show you a paper and ask you if that is an earlier form than the March 2nd form of the license agreement?

A. Yes, a part of the wording of the proposed license agreement was written out three years ago.

3 Mr. GROSVENOR: Just read my question, please.

The stenographer then read the question.

Q. Is that an earlier form?

THE WITNESS: Just leave my answer as it is.

Mr. GROSVENOR: I asked you is that an earlier form?

THE WITNESS: I have answered.

Mr. GROSVENOR: Answer yes or no.

A. Yes, and some of the paragraphs in the form presented were compiled back as far as three years ago.

4 Q. Have you any of those earlier forms?

THE WITNESS: Of three years ago?

Mr. GROSVENOR: Yes.

A. Yes.

Q. Will you produce them in Court? A. I will.

Q. Have you any of the forms earlier than March 2nd forms other than the ones drawn up, as you say, about three years ago? A. Well, as it is related—

Mr. GROSVENOR: Just answer the question. Read him the question. 1

The stenographer then read the question.

THE WITNESS: I am trying to make my explanation clear to you.

Q. Answer this question: The memorandum of agreement of March 2nd is the earliest form we now have in evidence of any attempt to embody in writing the license agreement, is it? A. In so far as—

Mr. GROSVENOR: Just answer yes or no.

THE WITNESS: I cannot. 2

Mr. GROSVENOR: Read the question.

The stenographer then read the question.

Mr. NOBLE: Counsel for defendants objects to the question because the witness has a number of times testified that the paper of March 2nd was not an attempt to draw up a license agreement, but was a contract or agreement concerning the license agreement, and the earliest form which he has preserved of that paper; Exhibit No. 3 being the actual paper which the witness drew up at that time.

BY Mr. GROSVENOR: 3

Q. Mr. Wayman, look at these papers again; these first two sheets are entitled "Proposed Arrangement for Licensed Manufacturers." A. Yes.

Q. Does that paper refer to a proposed arrangement of licensed manufacturers of sanitary enameled iron ware?

A. Yes.

Q. When did you draw up that paper?

A. As near as I can remember some time in September.

Q. What year? A. 1909.

Q. After you became Commissioner of the Sanitary Enameled Ware Association? A. Yes. 4

Q. Did you send this to the different manufacturers, that is a copy of this, to the different manufacturers?

A. Not to all, as I remember.

Q. To how many of them?

A. I couldn't say; I talked with some of them, and to others I sent it, and to others I handed a rough outline which I kept on revising from time to time.

Q. And those eight pages attached to the first two beginning "this agreement made in duplicate this (blank) day of (blank) by and between E. L. Wayman," and so forth. Was that attached to these first two sheets? A. Yes.

Mr. GROSVENOR: I offer the first two sheets in evidence as Petitioner's Exhibit No. 108.

Papers referred to were marked and filed as "Petitioner's Exhibit No. 108."

Mr. GROSVENOR: I offer the eight pages referred to in evidence as Petitioner's Exhibit No. 109.

Papers referred to were then marked and filed as "Petitioner's Exhibit No. 109."

BY Mr. GROSVENOR:

Q. I will read this Exhibit No. 108. (Reading):

"'Proposed Arrangement for Licensed Manufacturers.'

"The execution of a Licensee Agreement with E. L. Wayman for the manufacture of Sanitary Enameled Iron Ware under patents owned by him covering Electric Dredgers, and under his right to grant Licenses for manufacturing Ware by Air Dredgers.

"The manufacturers to be divided into three classes according to the proportion their business bears to the whole."

You meant by their business, their business in sanitary enameled iron ware? A. Yes.

Q. And you mean there the proportion which their business bore to the whole business of all the manufacturers? A. Yes.

Q. (Continuing): "and to execute licenses to be known as follows and on the following terms:

Class A Manufacturers' License Royalty $1,500 per month."

The largest manufacturers were to be in that class?

A. Yes.

Q. (Continuing):

Class B Manufacturers License Royalty $1,200 per month.
Class C " " " 800 per month.

"At the end of the third month the above royalties will be subject to 95% rebates if the terms of the license have

been complied with and at the termination of each succeeding month a like rebate." 1

You contemplated there paying that rebate yourself?

A. Yes.

Q. (Continuing): "75% of the penalties deducted from the manufacturers violating agreement, to be divided among the Licensees in good standing for the month in proportion to the sum each Company's royalties bear to the whole."

By that 75 per cent. of the penalties you meant from the royalties accruing from the manufacturers in observing the license arrangement, isn't that right? A. Yes. 2

Q. (Continuing): "The division of the ware into four schedules as follows:

"Schedule 1 First Class Guaranteed Baths.
" 2 All other grades of Baths.
" 3 Small Ware—Lavatories, etc.
" 4 Roll Rim Sinks, One and Two Pieces Flat Rim Sinks.

"Price preferentials to be arranged something like the following." 3

By "price preferentials" you meant the differentials to be allowed the several manufacturers, is that right?

A. Yes.

Q. Now, at the time this rough form was sent out with the contract of eight pages which I have attached as Petitioner's Exhibit No. 109, you were not yet considering resale prices? A. Yes, I had that in mind.

Q. Does that appear here? A. No, not as I remember.

Q. You did not attach to these papers, then, a proposed licensed agreement for jobbers? A. No.

Q. That was drawn up, then, subsequent to September, 1909? 4

A. No, that was drawn up three years ago in a rough form.

Q. That was the time you were with the—

A. (Interrupting): Seamless Steel Bathtub Company.

Q. Did they make porcelain enameled iron ware?

A. They made porcelain enameled steel bathtubs which were similar to enameled cast iron bathtubs.

Q. Are there any more firms manufacturing that kind?

A. No, except a German concern, I think.

Q. It is not able to compete with sanitary enameled iron ware, is it? A. I believe it is.

Q. It can not be run on a paying basis, can it?

A. No—

Q. (Continuing): "In order that there may be some legal arrangement for holding together the various manufacturers of Sanitary Enameled Ware" what did you mean by that?

A. By keeping them working uniformly with respect to all shop conditions and practices and the use of uniform materials and uniform distributing methods.

Q. And uniform prices? A. Yes.

Q. And uniform discounts to jobbers? A. No.

Q. Uniform except in so far as they were to allow these special preferentials? A. Yes.

Q. Or, as they were later known, differentials? A. Yes.

Q. (Continuing): "and enable them to secure business on a continuous and profitable basis at price differentials that will insure each a fair proportion of the business, I wish to ask if your Company would be amenable to enter into a licensed patent arrangement with the writer along the lines of the attached proposed arrangement."

"Such an arrangement would not interfere with the association as it exists or the purpose for which it was organized. It does not mean a selling company or a pool, but simply legalized selling co-operation."

You mean by legalized selling co-operation a selling co-operation made lawful? A. No.

Q. Then, what did you mean?

A. I mean if all the companies were using manufacturing processes that were patented and valuable that it would be legal for me as owner of those patents to control the selling prices.

Q. For each of them? A. Yes.

Q. And their discounts? A. Yes.

Q. And their special preferentials? A. Yes.

Q. (Continuing): "It would be my idea to create a list of differentials for the various companies from a Standard price and these differentials subject to change as conditions varied, so that each Company would be treated fairly in proportion to the whole.

"I have taken this matter up with some of the Companies verbally and they are very much in favor of it." 1

At this time you say you had seen some of the manufacturers about a license agreement with you? A. Yes.

Q. And to others you gave copies of this agreement here known as Exhibits Nos. 108 and 109?

A. That, or a similar one. I changed it so often that I cannot remember whether that is the one which I gave them or not.

Q. But you gave them from time to time new forms as you made the changes?

A. Yes, sir, as my ideas were formed. 2

Q. And you were in constant consultation with the various manufacturers?

A. Yes, but not with respect to changes embodied in the form which I issued from time to time. Those changes were the result of my own judgment as I became more and more in touch with the conditions.

Q. You would give a manufacturer one of these contracts; you then went and saw him and asked him if he would join, is that it? A. Not at that time.

Q. Would you ask him if he were favorable to it?

A. I would, for instance, ask him to look over the paper. 3

Q. And then he would state whether or not he had objections to it?

A. No, I simply handed the papers to him and then talked to him with the idea of finding out if he would be in favor of such a proposition or method of conducting the enameled iron ware business, if the details should be satisfactorily worked out.

Q. And in trying to ascertain in your own mind for your own purposes whether the details could be worked out, you tried to find out if he had objections to the form which you had given him? 4

A. I tried to ascertain whether or not he had objections to the general plan of entering into a license agreement.

Q. And, if he had objections and so stated to you, you then asked what were his objections?

A. I usually presented the best arguments that I could think of.

Q. (Continuing): "Will you kindly look over the attached papers and let me have your ideas in the matter

as early as possible? If the matter appeals to those with whom I have not talked as favorably as I think it will, I can arrange to put the arrangement into working order by January 1st, 1910."

Have you preserved a copy of this Mr. Wayman?

A. No, I have not.

Q. Between September, 1909, and March 2, 1910, did you issue other forms of contracts to different manufacturers? A. I am under the impression that I did.

Q. Have you retained any copies of those?

A. No, for the reason—

Mr. GROSVENOR: Strike out the reason. Your counsel can bring that out.

Mr. NOBLE: Counsel for defendants objects to counsel for Government not permitting witness to finish his answer.

Mr. GROSVENOR: The question was simply whether he preserved it, that is all.

Mr. NOBLE: And the witness wanted to say why he did not preserve it.

Q. Why haven't you got any of those forms which you made?

A. Because I used the last one I had for sending it to one of the manufacturers who had not received one or having been through with them I simply threw them away. Very often I ran out of papers which I did not have time to make copies of, and the reason I did not make copies of them at the time was for the reason that I did not consider them of sufficient importance.

Q. This paper was not drawn up in December, but in September, 1909, and from that month until the final execution of the papers on May 6th in New York City, your best efforts were used to bring about a consummation of this plan?

A. I used all the spare time I had to bring about this idea which I had had in mind for several years.

Q. You were seeing the different manufacturers?

A. Yes.

Q. And writing to them? A. Yes.

Q. And talking to them at the meeting or after the meetings?

A. The preliminary—or, in fact, all the conversations

I had were conducted either after the meeting or at lunch 1
times during the days the meetings were held.

Q. I will now go over some of the terms of Exhibit No. 109, which was the agreement you state was drawn up by you in September, 1909, and accompanied the last exhibit. This agreement contemplated the divison of the manufacturers into three classes, is that right? A. Yes.

Q. The strongest or the largest manufacturers were put in Class A; the second largest in Class B, and the smallest in Class C? A. Yes, with respect to size.

Q. Eventually the distinctions between the manufacturers were made by virtue of the differentials, is that 2
right? A. Yes.

Q. The class feature was eliminated? A. Yes.

Q. Had you at that time decided what patents should be assigned to you?

Mr. NOBLE: I object to the question as containing a suggestion.

Q. Had any patents at that time been assigned to you?

A. No.

Q. Had you an option on any patents?

A. No—that was in September.

Q. Yes, in September, 1909? A. No. 3

Q. Had you any special patents in mind? A. Yes.

Q. State those, please.

A. I had the Arrott patent in mind principally.

Q. What other patents?

A. And a patent of the Iron City Manufacturing Company known as the Nesbit patent.

Q. And what other or others?

A. Any enameling patents that might have existed. I was not familiar with all the patents that were in existence at that time.

Q. But you were prepared to secure assignments of any 4
of them that might have existed?

A. Yes, I was trying to secure assignments.

Q. You said you secured the options on those patents in the latter part of September, 1909?

A. I secured an option on a patent in the latter part of 1909, option on an application for a patent in 1909, and another option early in January, 1910.

1 Q. You testified that you paid no consideration for the option on any of those patents? A. No.

Q. No consideration for the option at that time?

Mr. NOBLE: I object to the use of the word "consideration."

A. No.

Q. Did you pay anything in the latter part of 1909 for any one of those three patents? A. No.

Q. The first time you paid anything was in May, 1910?

A. Yes.

2 Q. In March, 1910, you sent a license agreement around that had on it about 15 patents; do you remember that?

A. Yes.

Q. Had you secured options on those 15 in the same way as the options on the Arrott patent, Lindsay and Ditheridge patents? A. Yes.

Q. Had you paid anything for any one of those options?

A. No—I beg your pardon, I wish to amend that answer; I included some patents in that list on which I had not secured options.

Q. You mean by not having secured options that you

3 had not received the consent to sell? A. To sell, yes.

Q. Did you draw this form up, Mr. Wayman (indicating)? A. As I remember that form, yes.

Q. Now, paragraph 9 reads: "The Licensee shall pay the following royalties for License herein granted, to wit: Class A License $1,500 per month."

The agreement as finally consummated in May provides for royalties on furnaces operated, does it not? A. Yes.

Q. This agreement provided for royalties per month on the license for patents? A. Yes.

Q. That is, in this contract the basis was to be the size

4 of the manufacturer in estimating the amount of the royalty?

A. Yes rough figures having been placed there without any figures in view.

Q. This paper continues, paragraph 10: "This agreement is entered into as a Class (blank) License, with the following price differentials:" There are no differentials stated. That was a matter not yet determined?

A. That was a matter I had not yet determined upon.

Q. When you discussed the matter with manufacturers didn't they want to know what their differentials were to be? 1

A. No, at that time hardly any details were discussed. It was simply to embody the idea in the main.

Q. That was in September, 1909? A. Yes.

Q. Now, paragraph 10 says: "This agreement is entered into as a Class (blank) License, with the following price differentials: (Subject to exceptions in paragraph 11) Selling Discount from Price List issued by the Licensor.

"Schedule 1 First Grade Guaranteed Baths;

Schedule 2 All other Grades of Bath; 2

Schedule 3 Small Ware—Lavatories, etc.;

Schedule 4 R. R. Sinks—1 & 2 pieces Flat Rim Sinks; but may be changed to either Class (blanks) or Class (blank)." Does that mean the manufacturer may be changed from class to class?

A. Having in mind the differentials.

Q. That is, the differential of the manufacturer would be changed? A. Yes.

Q. I will read on: (Reading): "when notified in writing by the Licensor, upon two thirds vote of all the companies operating under a similar license or upon the 3 recommendation of an executive committee appointed by the various companies for this purpose." You remember that provision? A. Yes.

Q. That provision contemplates, does it not, the appointment of an executive committee? A. Yes.

Q. You finally, by your arrangement of May 6, 1910, had appointed a commission?

A. As representing the other manufacturers.

Q. That commission, you have testified, was elected by vote of the manufacturers after they entered into the licensing arrangement on May 6th? A. Yes. 4

Q. Directly after the signing of these agreements?

A. Yes.

Q. (Continuing): "It shall be the particular and special charge of this committee to consider any complaints which may be made by any member to the effect that the actual working of the classification under which any particular Company may be working is to the detriment of the others and to make recommendation which may tend to remedy such inequality, it being the intent that from time

1 to time such measures as may be deemed equitable for the relief of any Licensee, may be adopted as provided for.

"(11) The following Companies shall be quoted (blank) per cent. discount from the prices established by the Licensor, on all schedules."

Then, there is a blank; you had not at that time determined what companies should be placed under that provision?

A. I do not recall what I had in mind in that paragraph.

Q. At any rate, that paragraph is blank?

A. Yes; I cannot remember the circumstances or ideas I
2 had in connection with that paragraph.

Q. I will read the next paragraph which follows:

"The following Companies shall be quoted (blank) per cent. discount from the prices established by the Licensor, on all schedules."

There is no enumeration of companies after that paragraph either, is there? A. No.

Q. Now, paragraph 13 reads: "If at the end of the third month of the first year (said year beginning [blank])" you had not yet determined when it should begin? A. No.

3 Q. Why not?

A. Because I did not have my plans in such shape as to find out whether the companies would enter into a licensing agreement.

Q. (Continuing): "it shall appear that the Licensee has during the first month complied with all the terms of this agreement, the Licensor shall credit the Licensee upon its next succeeding payment hereunder the following rebates from the royalties paid for said License for said first month's royalties, to wit: 95% of the amount originally paid by the Licensee."

4 That was subsequently changed to what?

A. In the final license agreement it reads 80 per cent.

Q. Paragraph 15 reads: "In case of failure on the part of the Licensee to comply fully with the terms of this agreement during any month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited (as hereinafter provided for) as penalty for said violation and shall at once notify the Licensee to that effect. Penalties shall be deducted from all unpaid rebates at the rate of

$1,000.00 for each violation and 75 per cent. of all penalties 1
retained by the Licensor will be divided among the Licensees in good standing during the month, in proportion to the amount each Company's royalty bears to the amount to be divided." Then, paragraph 20 reads as follows: "This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of five (5) years from the date hereof." The period finally determined upon was what?

A. Two years.

Q. Then, there is a page here which enumerates four schedules and states that the Class A manufacturers shall 2
receive or pay net prices—which should that be, and what does that mean?

A. That is at whatever prices I might establish.

Q. And the Class B at 2½ per cent. discount? A. Yes.

Q. And Class C at 5 per cent. discount? A. Yes, five.

Q. Then, there is a list of 19 manufacturers of sanitary enameled iron ware; those are the names of the corporation defendants in this case, with what exceptions?

A. Those are the names of the corporation defendants in this case with the exception of the Clymer Manufacturing Company, the Blairsville Enameled Ware Company, The 3
Iron City Sanitary Manufacturing Company, J. M. Kohler Sons Company.

Q. And on the last page there is a calculation as to the amount of royalties which each of those 19 companies would probably pay as classified? A. Yes.

Q. And then a calculation that 95 per cent. rebate would leave yearly $12,600? A. Yes.

Q. That means $12,600 as returns to the Licensor, is that right? A. Yes.

Q. Out of which he had to pay expenses? A. Yes.

Mr. GROSVENOR: Counsel for defendants have pro- 4
duced certain letters between E. L. Wayman and the Western Supply Company, which were asked for by counsel for the Government, and which I will offer in evidence as follows: I offer as Petitioner's Exhibit No. 110 the letter addressed to Mr. Edwin L. Wayman, Pittsburgh, Pennsylvania, by the Western Supply Company, per J. L. Sullwold, dated June 7, 1910.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 110."

Mr. GROSVENOR: That letter reads as follows:

"Saint Paul, Minn., June 7, 1910.

"Mr. Edwin L. Wayman,
Pittsburgh, Pa.

"Dear Sir:—

"As we purchase our small enameled ware principally from J. M. Kohler Sons Co., Sheboygan, Wis., we ask you for a written permission to continue to sell this commodity, so that we may continue to deal with this concern, whose goods we have illustrated in our catalogue and enjoy the full rebates of the licensed jobbers' agreement.

"Yours very truly,
"Western Supply Co.,
"dict. J.L.S. Per J. L. Sullwold."

I also offer a letter of July 9 addressed to Mr. J. L. Sullwold, care of the Western Supply Company, and purporting to be from Mr. Wayman, as Petitioner's Exhibit No. 111.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 111."

Mr. GROSVENOR: This letter reads as follows:

"W-791022-I

"July 9th, 1910.

"Mr. J. L. Sullwold,
c/o The Western Supply Co.,
St. Paul, Minn.

"Dear Sir:—

"Referring to our conversation in Chicago with reference to Jobbers' License Agreement, I had hoped to take the matter up further with you the next day but was unable to locate you.

"In accordance with our conversation, I wish to supplement my letter of June 10th with the following:

"'If you will execute the Jobbers' License Agree-

ment, it will be satisfactory for you to continue pur- 1
chasing Ware made by the J. M. Kohler Sons Co., Sheboygan, Wis., until further notice, with the understanding that you will stock some Licensed Ware and push the sale of it and that you will furnish me with the amounts of your total purchases from the Kohler Co. monthly. These amounts need not be itemized.'

"I hope that Mr. Kohler will in the future see fit to manufacture Ware under Patents that I own for the reason that I believe he can make better goods than he is making at the present time and more 2
economically. I had hoped to go further into the matter with you on the next day, but will try and see you again in Chicago when you find it convenient to be there if you will let me know.

"I am very pleased to make your acquaintance and trust we will become better acquainted in the future.

"With kind regards and trusting that you reached home safely, I am,

"Yours very truly,"

Mr. GROSVENOR: I then offer the letter of July 11, 3
which is addressed to Mr. Wayman from Mr. J. L. Sullwold, as Petitioner's Exhibit No. 112.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 112."

Mr. GROSVENOR: That letter reads:

"Saint Paul, Minn., July 11, 1910.

"Mr. E. L. Wayman,
Pittsburgh, Pa.

"Dear Sir:—

"Yours of the 9th at hand and noted. I beg to 4
state that the proposition outlined in your letter is an insult to any one of ordinary intelligence and our Company will now take the stand that we will use all honorable means to break up this illegal combination.

"We shall continue to use Kohler goods.

"Yours respectfully,

"dict. J.L.S. "J. L. Sullwold."

1 Mr. GROSVENOR: And I offer the reply addressed to Mr. J. L. Sullwold, care of the Western Supply Company, dated July 14, as Petitioner's Exhibit No. 113.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 113."

Mr. GROSVENOR: This letter reads:

"W-7141005-C

July 14, 1910.

"Mr. J. L. Sullwold,
2 c/o Western Supply Co.,
St. Paul, Minn.

"Dear Sir:

"This is to acknowledge receipt of your letter of the 11th inst., for which please accept my thanks.

"Yours very truly,"

Mr. GROSVENOR: Counsel has produced certain letters exchanged between you and the Atlas Supply Company of Muskogee, Oklahoma, which I will offer in evidence as follows: The first is the letter of
3 June 30th, 1910, from the Atlas Supply Company, per H. P. Bowser, to you. I offer that as Petitioner's Exhibit No. 114, without the stamp.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 114."

Mr. GROSVENOR: Petitioner's Exhibit No. 114 reads as follows:

"June 30th, 1910.

"Mr. E. L. Wayman,
Pittsburgh, Pa.

4 "Dear Sir:

"Acknowledging your telegram of June 27th relative to the agreement covering Sanitary Licensed Enamel Ware. I have gone over this matter carefully with our people and have been advised under present conditions not to sign any contracts or agreements. Our prices conform with those of licensed manufacturers and should we decide to make any

changes in them we will be glad to furnish you with our new selling prices. 1

"Yours respectfully,
"Atlas Supply Company.
Per, H. P. Bowser,
"Secretary & Treasurer."

I offer this letter of July 12, 1910, also addressed to you, from the Atlas Supply Company, as Petitioner's Exhibit No. 115.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 115."

Mr. GROSVENOR: That letter reads: 2

"July 12th, 1910.

"Mr. Edwin L. Wayman,
Arrott Bldg.,
Pittsburgh, Pa.

"Dear Sir:

"Acknowledging your favor of July 10th will say that I replied to your telegram of July 17th and fully explained our position in regard to the jobbers license agreement. This letter was not directed properly and was returned to us last Saturday, at which time we forwarded it to the proper address. Suppose you have received it by this time. 3

"Yours respectfully,
"Atlas Supply Company,
Per, H. P. Bowser,
"HPB/TW" Secretary & Treasurer."

I then offer in evidence a telegram dated July 11, 1910, from the Atlas Supply Company to you, as "Petitioner's Exhibit No. 116."

Telegram referred to was then marked and filed as "Petitioner's Exhibit No. 116." 4

And your reply, which is dated July 11, 1910, addressed to the Atlas Supply Company, I offer as Petitioner's Exhibit No. 117.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 117."

Mr. GROSVENOR: These Exhibits Nos. 116 and 117 read as follows:

1 "Muskogee, Okla., July 11, '10.

"Edwin L. Wayman,
Arrott Bldg., Pgh.

"Kansas City jobbers are quoting Kansas City resale price on enamel ware in Oklahoma irrespective to resale prices.

"Atlas Supply Co."

"Pittsburgh, July 11, 1910.

"Atlas Supply Co.,
Muskogee, Okla.

2 "Please send me definite information, if possible regarding Kansas City Jobbers prices in your territory. It would simplify situation if you would sign License Agreement regarding which I wrote you yesterday.

"E. L. Wayman."

I now introduce as Petitioner's Exhibit No. 118 a night letter telegram addressed to you by the Atlas Supply Company and dated June 17, 1910.

Paper referred to was then marked and filed as
3 "Petitioner's Exhibit No. 118."

Mr. GROSVENOR: That reads as follows:

"Muskogee, Okla., June 7th, '10.

"E. L. Wayman,
Arrott Bldg., Pittsburgh, Pa.

"In event we execute license agreement will we be permitted to purchase ware from Kohler. Your wire received. Have Kansas City jobbers adopted the agreement.

"Atlas Supply Co., 11.27 p. m."

4 The reply to that telegram was introduced by counsel yesterday. The next is a letter dated July 10, from you to the Atlas Supply Company, and I offer that as Petitioner's Exhibit No. 119.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 119."

Mr. GROSVENOR: This letter reads as follows:

"W-7101043-C
July 10, 1910.

"Atlas Supply Co.,
Muskogee, Okla.

"Gentlemen:

"I have not received reply to my telegram of June 17th and letter of the 22nd, and would thank you to advise me if you can see your way clear to execute the Jobbers' License Agreement on the terms contained therein; and also if you are maintaining the present resale prices.

"Thanking you in advance for reply, I am
"Yours very truly,"

Then there is another letter dated June 15 and addressed to the Atlas Supply Company which I offer in evidence as Petitioner's Exhibit No. 120.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 120."

Mr. GROSVENOR: That letter reads as follows:

"W-7151022-C

"July 15, 1910.

"Atlas Mfg. Co.,
Muskogee, Okla.

"Gentlemen:

"Answering your letter of the 30th ultimo, I am trying to arrange a meeting of some of the Jobbers in your territory who have not signed the License Agreement. Your territory is about the only exception in the whole country where any trouble seems to exist, and it would seem that a joint conference between the parties interested should have the desired result.

"Would you be willing to attend such a meeting if held in Chicago?

"Yours very truly,"

Q. Did you have such a meeting? A. Yes.
Q. Where was it? A. At the La Salle Hotel, Chicago.

1 Q. Who was present?

A. May I have that blue book? (Referring to book.) A representative from the Midland Plumbing Supply Company of Davenport, Iowa. A. Y. McDonald of McDonald & Morrison Manufacturing Company, Dubuque. Mr. Leighton of the Leighton Supply Company, Fort Dodge. Mr. Kretschmar of the Kretschmar Manufacturing Company, Dubuque, Iowa.

Q. Is that all you recall?

A. I think there was one more.

Q. Was Mr. Bowser there? A. Yes.

2 Q. Has Mr. Bowser signed? A. No.

Q. The Atlas Supply Company did not sign? A. No.

Q. Did you discuss the price list with those jobbers at the Chicago conference?

A. Only in so far as the zone in which Davenport and Dubuque were located.

Q. In what zone are those cities located?

A. They were at that time in Zone 3; they are now in Zone 1.

Q. What is Oklahoma in? A. Zone 5.

Q. Are these the jobbers referred to in this correspond-
3 ence (indicating)? You say in your letter of July 15 to the Atlas Supply Company, "I am trying to arrange a meeting of some of the jobbers in your territory who have not signed the license agreement." The territory referred to there was Oklahoma; these jobbers were all in Iowa or one or two other states?

A. Yes; there were no Kansas City or Oklahoma people there, but these people may do business in that territory.

Mr. GROSVENOR: I introduce as Petitioner's Exhibit No. 121 a letter addressed to Wayman and dated June 18, 1910, from the Atlas Supply Com-
4 pany.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 121."

Mr. GROSVENOR: That letter reads as follows:

"June 18th, 1910. 1

"Mr. Edwin L. Wayman,
Arrott Bldg.,
Pittsburg, Pa.

"Dear Sir:

"Acknowledging your favor of June 16th will say that since we opened up here a year ago this spring we have handled quite a bit of Kohler's Enamel Ware. Before we ordered our opening stock we corresponded with a number of the leading Enamel Ware manufacturers and tried to purchase material from them. A great many of them had their ware tied up with other jobbers, who had the exclusive sale of this territory and were therefore unable to supply us. 2

"The Kohler people offered us a very nice proposition and we decided to handle their ware. They have used us very nicely and their goods have given excellent satisfaction, and we have worked up a very nice business, and were we to change our ware at the present time, it would mean quite a loss of business to us. 3

"I have recent advice from the Kohler people, saying that they were willing to maintain the same price as licensed manufacturers. If they do this and we maintain resale prices I see no reason why we should not be allowed to purchase material from them.

"When we wrote for prices to the different concerns for our opening stock we received quotations from several and at the price that they quoted us it would have been impossible for us to compete with other jobbers, as Crane Company and Kansas City jobbers were selling bath tubs, etc., at very near the price which some of the manufacturers wanted for the same material from us. The Kohler people have taken excellent care of us and have put us in position whereby we are on equal footing with other jobbers. For these and other reasons we do not feel like making a change at the present time. 4

"We trust that you will see it in this light and

1 that we may receive your permission to continue the present relation already established.

"Yours respectfully,

"Atlas Supply Company,

Per H. P. Bowser,

"HPB/TW Secretary & Treasurer."

BY Mr. GROSVENOR:

Q. I show you a letter dated August 17, 1910, and ask you if you recall sending out such a letter?

THE WITNESS: Whom to?

2 Mr. GROSVENOR: To any one. Do you recall writing such a letter?

A. Yes.

Q. To whom was it issued? A. I cannot say.

Q. Was it sent out generally as a circular? A. No.

Q. Was it sent out to jobbers?

A. It was addressed to some jobbers whose name I cannot remember.

Q. To one jobber?

A. Yes, it may have been to several, but I cannot remember the names.

3 Q. Was it the Atlas Supply Company?

A That I cannot recall.

Q. But you do identify the letter?

A. Yes, as having been sent to some jobber.

Mr. GROSVENOR: I offer that letter in evidence as Petitioner's Exhibit No. 122.

Letter referred to was marked and filed as "Petitioner's Exhibit No. 122."

Mr. GROSVENOR: This letter reads:

"W-8171013-C

4 "Pittsburgh,

Aug. 17, 1910.

"Gentlemen:—

"Will you be kind enough to advise me if you are purchasing Enameled Iron Ware from the J. M. Kohler Sons Co.?

"Thanking you in advance, I beg to remain,

"Yours very truly,

(Signed) E. L. Wayman."

Q. I show you two letters, one dated June 14, 1910, and signed "Hotchkiss, Vail & Garrison Company," and I ask you if you remember receiving this letter from them, and I show you another letter and ask you if that is your reply to the letter which I first showed you? 1

A. Yes.

Mr. GROSVENOR: I will offer this letter as Petitioner's Exhibit No. 123.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 123."

Mr. GROSVENOR: Petitioner's Exhibit No. 123 reads as follows: 2

"June 14, 1910.

"Mr. Edwin L. Wayman,
Pittsburgh, Pa.

"Dear Sir:

Re: Jobbers License Agreement

"We want to write you, very frankly, asking for a correct interpretation of this agreement, as it affects our own particular position. Doubtless you have had many inquiries from jobbers throughout the country, and these points may have been brought to you, or they may have been gone over thoroughly by you previously. We do not know whether we are particularly obtuse, but a little enlightenment from you will be gratefully received. 3

"In the first place, we belong to a class of jobbers of peculiar situation and indigenous to various localities. We have established an attractive showroom and have been handling only the Highest Grade of Plumbing Fixtures in general. We handle no galvanized boilers, pipe, solder or plumbers' supplies generally, confining our business strictly to fixtures especially equipped with particular brass goods, to make them complete. These, by our own efforts, are specified by the architects, in their various building operations, and usually a job of plumbing comes to us with all the fixtures complete for the building, whether it be residence, hotel, office building, school or bank, and the contract is made with the plumber for a stipulated amount of money for 4

the entire fixtures complete as given to him in our list. You can, naturally, see from this that we are no menace to any License Agreement as far as cutting of the price is concerned. In fact, we are more interested in maintaining a high price than any other class of jobbers, but the one clause in the Agreement which will work a hardship to us is, the Lump Sum Paragraph #4 under General Conditions. For instance—The 'Morris' Tub of the Standard, or the 'Superb' Tub of U. S. Sanitary becomes in our combination, the CUMBERLAND Tub, and is so known and specified by the architects we are dealing with, and the plumbers who may be doing their work. This tub, equipped in various ways, with either Bell Supply or Top Nozzle Fixture and with special porcelain pieces and with very heavy brass work, takes a price much higher than your schedule price to the plumber, and if we should bill this separate and apart we would be revealing to the plumber a vital point in our business which is necessary, in its maintenance, and would occasion a great deal of controversy and adjustment by him. We are perfectly willing to maintain a separate file, showing exactly the net price that this tub was sold at, for your inspection, but we do believe that the privacy of our business should not be invaded to that extent by the plumber. This same condition would apply, we believe, to Meyer-Sniffen, Federal Huber Co., of New York, and The Peck Bros. & Co., of this city, and it presents a problem of difficulties, along with dangers, to our very existence. This same example, which we give of the bath tub, is true of lavatories, and we would like your views as to this condition, which is vital with us. Bear in mind please, that there is absolutely no danger of our cutting prices as the expense of the conduct of our business is greater than the ordinary jobbers, from the fact that we maintain an architectural force as well as a draughtsman, and a showroom, so that we could not afford to sell goods on a basis of only 10% profit, as we understand some of the jobbers do. We are not after an immense volume of business but are after a particularly fine trade such as residences, the owners of

which are willing to pay a higher price for specially high grade goods. 1

"In the second place, J. M. Kohler Sons Co. have established a showroom in our city, which is very attractive, and they also have friends amongst the architects, who specify their material. If our friends amongst the plumbers ask us for price on a certain architect's specification, which calls for Kohler's goods, according to Paragraph 10, under the subject of Rebates, this is prohibited except by permission from you for each specific case. This is going to lead, we fear, to an endless amount of correspondence. 2 Many times a price is asked immediately, and we would scarcely have time to get word to you, and get your permission, before the order would be placed.

"Third, in many cases where contracts were placed with us for plumbing fixtures, delivery not being required until late June, July or even first of August, we had placed the orders for these tubs with either The Standard Sanitary Mfg. Co. or the U. S. Sanitary Mfg. Co. for shipment at stated times. These orders were placed prior to our having had any knowledge of a Licensed Agreement, and the orders were acknowledged in the regular way. What is the status of these orders, with those two manufacturers, at the present time? If they ship them at the times which we designated they would, of course, be subject to the conditions prevailing at the time the order was placed, in our opinion, as our sales were made in accordance with the conditions at that time. We would also like an expression from you on this subject. 3

"You will pardon the length of this letter but we wanted to place our situation clearly to you, in these details, and ask for your your opinion as best how to handle them. Bear in mind that, at no time, would we ever be in danger of cutting prices or disturbing contracts. On the other hand, we would be one of your best selling agents to boost up the prices. 4

"We would appreciate a very frank reply.

"Very truly,

"EWH" "The Hotchkiss, Vail & Garrison Co."

1 Mr. GROSVENOR: I also offer this letter dated June 17th, 1910, as Petitioner's Exhibit No. 124.

Q. This letter reads:

"W-6171008-R
June 17, 1910.

"The Hotchkiss, Vail & Garrison Co.,
New York.

"Gentlemen:—

"Answering your esteemed favor of the 14th would state
2 that it is impossible for me to establish selling prices on goods not covered by the patents which I own. I have established selling prices on enameled iron ware, and although it may work some hardships on the jobber in separating the billing of the fixture from the ware, I cannot under the circumstances do anything different.

"There is no objection to your getting better prices if possible than those established in sheets, but the conditions in general that have been established will not in my estimation effect you as much as indicated in your letter. The margin of profit established on enameled ware is from all reports received, greater than the jobbers have been in the
3 habit of getting in the past few years. While I would like to accommodate you it is impossible to grant one jobber concessions that cannot be granted others, and I believe if you will follow the prices, and conditions outlined that your results on your total business will be better in the next year than they have in the past.

"As far as the Manufacturers who do not execute a license are concerned, would state that licensed manufacturers will give their jobbers every protection. I hope to be able to induce the Companies not licensed thus far to manufacture goods under the Patent of Processes."

4 What do you mean by the "Patent of Processes"?

A. That should read, "Patented Processes."

Q. Under what patented processes, then?

A. Enameled patented processes.

Mr. GROSVENOR: The letter continues as follows: "and I believe that I will succeed in the very near future. I hope to meet some of the New York jobbers sometime next week, and hope I will be able to

explain several points that on the face of them are not quite plain. 1

"With reference to the orders you may have unfilled on your books, would state that it is the desire of the Licensed Manufacturers to support their jobbers in every way possible, and if you will furnish me a copy of these orders I will arrange the matter to your satisfaction.

"I regret that I was not able to answer your letter sooner but an excess of mail at this particular time has prevented me giving the attention to each individual communication that it deserved. 2

"Thank you for writing me, and trusting I may have the pleasure of seeing you in the near future, I am,

"Yours very truly,

"E. L. Wayman."

Q. I show you a copy of a letter purporting to be written by you and ask you if you recall sending that letter out? A. Yes.

Mr. GROSVENOR: I offer this letter in evidence, it being dated May 11, 1910, and it is headed: "Edwin L. Wayman, Arrott Building, Pittsburgh," as Petitioner's Exhibit No. 125. 3

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 125."

Q. That was sent to the different licensed manufacturers? A. Yes.

Q. On the date indicated? A. Yes.

Mr. GROSVENOR: I will read that letter. (Reading):

"May 11th, 1910.

"This is to remind you that if you are not equipped with Automatic Apparatus for enameling that are covered by the Patents in your License Agreement that you should take steps to install this equipment by June 1st. Will you kindly let me hear from you by return mail as to what you are now using and which patent you will operate under? 4

"Yours very truly."

1 By Mr. Grosvenor:

Q. Did you receive these two letters (indicating) in reply? A. Yes.

Mr. Grosvenor: I offer these two letters of May 13th and 16th as Petitioner's Exhibits Nos. 126 and 127 respectively.

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 126 and 127," respectively.

Mr. Grosvenor: These letters read as follows:

2 "Union Sanitary Mfg. Co.
Noblesville, Ind.

May 13th, '10.

"To E. L. Wayman,
1509 Arrott Bldg.
Pittsburgh, Pa.

Subject

"Dear Sir:

"Your favor of the 11th, with reference to the
3 Automatic Apparatus for enameling covering the patents in our license, will state that we are equipped at the present time for this arrangement.

"Yours truly,

"EVB

"Union Sanitary Mfg. Co.,
E. V. Brigham,
Sec'y-Treas."

"W-5161006-I
May 16th, 1910.

4 "Mr. E. V. Brigham,
c/o Union Sanitary Mfg. Co.,
Noblesville, Ind.

"Dear Sir:

"Replying to your letter of the 13th with reference to Automatic Apparatus for enameling, you state that you are equipped at present for this Arrangement, but do not state whether you are using Electric

Power or Air. Kindly send me this information by return mail so that I can instruct the printer regarding the proper Labels to send you. 1

"Yours very truly,"

Q. I show you now a letter dated August 13, 1910, and addressed to the jobbing trade and signed by you. Do you recall sending that out? A. Yes.

Mr. GROSVENOR: I offer that as Petitioner's Exhibit No. 128.

Letter referred to was marked and filed as "Petitioner's Exhibit No. 128." 2

Mr. GROSVENOR: That reads as follows:

"August 13, 1910.

"To the Jobbing Trade:

"My attention has been called to the fact that certain Jobbers have allowed Plumbers to return to them the crates taken off of Enameled Ware, and have made them credit for these crates.

"This is a violation of your Contract, and would be considered as cutting the price, and must not be done. Where a fixture is returned as defective, or 3 for some other reason, you would, of course, allow the credit for the crate, the same as for the fixture. Where the crate is returned without the fixture, there must be positively no allowance made for same.

"Yours very truly,

"E. L. Wayman,
Licensor."

Q. This exhibit has reference to certain regulations stated in the price list?

A. That has reference to necessary packings.

Q. And it has reference to certain conditions stated in 4 the price list, which is Exhibit No. 41?

A. That is provided for in paragraph 9 of the jobbers' license agreement.

Q. And the specific charges are established by the price list? A. Yes.

Q. At what pages of Exhibit 41, the price list issued on June 1? A. Page 18 of the white sheets.

Q. You testified that you made efforts to induce the

1 Lipp Company of Cincinnati, Ohio, to enter into a licensing agreement with you? A. Yes.

Q. I show you a letter of July 2, 1910, addressed to Albert Weil, secretary and treasurer of the Louis Lipp Company, Cincinnati, Ohio, and ask you if you remember writing that letter to Mr. Veil? A. Yes.

Mr. GROSVENOR: I offer that as "Petitioner's Exhibit No. 129.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 129."

Mr. GROSVENOR: That letter reads as follows:

2

"W-721010-C
July 2, 1910.

"Albert Weil, Sec'y & Treas.
Louis Lipp Company,
Cincinnati, Ohio.

"Dear Sir:

"Attached find copy of letter that I have written the Cincinnati Jobbers, which I trust will meet with your approval.

3 "If it is possible for you and Mr. Lipp to come to Pittsburgh sometime next week I trust you will do so, and I have no doubt what we could get together.

"With kind regards and thanking you for the courtesies extended while in your city, I am

"Yours very truly,

"E. L. Wayman."

Q. I show you another sheet and ask you if that is a copy of the enclosure referred to? A. Yes.

Mr. GROSVENOR: I offer that as Petitioner's Exhibit

4 No. 130.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 130."

Mr. GROSVENOR: That reads as follows:

"W-721009-C
July 2, 1910.

"Gentlemen:

"Although the Louis Lipp Co., has not signed the

License Agreement, and are not operating under the Patent Processes, I understand that, until further notice they will quote on their goods the same prices that have been established on Licensed Ware. In the past it has been their custom in your city to ship Tubs uncrated. They have agreed to discontinue this practice and will in the future, furnish Tubs crated, and will charge for crating. 1

"Yours very truly,"

Q. I show you a letter dated June 21, 1910, and written by you to Mr. Weil. Do you recall writing that letter.

A. Yes. 2

Mr. GROSVENOR: I offer that as Petitioner's Exhibit No. 131.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 131."

Mr. GROSVENOR: I will read this:

"W-6211005-I
June 21st, 1910.

"Mr. Albert Weil,
c/o The Louis Lipp Co.,
Cincinnati, Ohio. 3

"Dear Sir:—

"In reply to your letter of the 20th, I will try and arrange to call on you in Cincinnati some time next year.

"I understand that Mr. Ahrens and Mr. Lipp are old friends and am writing Mr. Ahrens suggesting that he make arrangements to be in Cincinnati at the time when the proposition can be gone over by all of us.

"Yours very truly, 4
"E. L. Wayman."

Q. Did you subsequently have a meeting with Mr. Lipps?

A. Yes, not with Mr. Lipps but with Mr. Weil, the secretary.

Q. And was Mr. Ahrens present? A. Yes.

1 Q. And did you at that time suggest that they enter into a licensing agreement with you? A. Yes.

Examination Suspended.

At this point a recess was taken for one hour, the hearing to resume at two o'clock p. m.

After Recess.

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2 EDWIN L. WAYMAN, resumed the stand for continuation of direct examination and testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR (continued):

Q. Mr. Wayman, I asked you to produce the reports of the licensed manufacturers showing the number of furnaces, &c. A. Here they are.

Q. This is from the time they entered into the licensing arrangement with you?

A. Yes, there is June, July and August there.

Q. You prepared this?

3 A. No, my assistant prepared it.

Q. You can state that it is correct?

A. It is approximately correct, yes.

Mr. GROSVENOR: I offer that in evidence, it consisting of three sheets, and being for the months of June, July and August, respectively, as Petitioner's Exhibit No. 132.

Papers referred to were then marked and filed as "Petitioner's Exhibit No. 132."

Q. I asked you also to produce a copy of the price list made up to date? A. This is it (indicating).

4 Q. Is that the one? A. Yes.

Q. The pages in the price list of June 1 which have been changed have been all withdrawn and other pages substituted, with the dates on which substituted?

A. Yes, such changes as made are noted therein as replacing June 1.

Q. Those that have dates subsequent to June 25 without the statement "Replacing Sheets of such and such a date" are new pages? A. Yes.

Mr. GROSVENOR: I offer that book in evidence as "Petitioner's Exhibit No. 133." 1

Price list book referred to was then marked and filed as "Petitioner's Exhibit No. 133."

Q. I direct your attention to page 1 of Schedule 1, being the five year baths, and I point to a list of names at the top of that page. Are those several names, Gem, Baltic, Appollo, Venice, Pilgrim, Priscilla—are those the names of particular baths manufactured by the manufacturers opposite whose names those words are placed? A. Yes.

Q. That is to say, the Gem is manufactured and sold by the Day-Ward Company, for instance? A. Yes. 2

Q. That page contains the names of 13 manufacturers manufacturing five-year guaranteed bath tubs?

A. Of that particular type.

Q. Of that particular type, yes, that is, five year guaranteed bathtubs and of those 13 names, 11 have license agreements with you, is that right? A. Yes.

Q. Then, all the five year bathtubs manufactured by those companies similar to the description contained on that page, are sold pursuant to the prices set out on that page in all the zones, is that right? For instance, take the Gem. The manufacturer is the Day-Ward Company and it wants 3 to sell some Gems to a jobber; then they get their price from that sheet? A. Yes.

Q. And the Humphryes Company, if it wishes to sell the Pilgrim bath, which is of the same type, they also look on this sheet? A. Yes.

Q. And the other manufacturers whose names appear on that sheet, they look to that sheet for their prices?

THE WITNESS: That is the licensed manufacturers?

Mr. GROSVENOR: Yes, the licensed manufacturers?

A. Yes.

Q. That sheet is typical of the way this price list is 4 made up?

A. Yes, in so far as trade names are given to the articles listed therein. For instance, some manufacturers don't give trade names to various articles they make.

Q. But if they sell something corresponding to the description given on any page of this price list, they follow the prices given on the page which gives the description of the article, is that right? A. Yes.

1 Q. In this price list, Exhibit No. 133, among the white pages, on page 15A and 15B and 15C you have set out certain examples of less than carload prices to plumbers in the various zones, is that right? A. Yes.

Q. Those are examples for the guidance of jobbers in making their sales to plumbers? A. Yes.

Q. That shows the prices they are to quote?

A. Yes, or how to arrive at a delivered price.

Q. At a delivered price governed by this price list, of course? A. Yes.

Q. I show you this example for Zone 6 which reads:
2 "Wanted delivered price at Cheyenne, Wyoming, of one five foot two year tub, Zone 6, price $29.75."

Mr. NOBLE: What is the number of that page?

Mr. GROSVENOR: That is on page 15B. Now, that price, $29.75, is the list price?

THE WITNESS: Yes.

Q. The discount stated is 36½ per cent.; that is the discount given for that zone? A. Yes.

Q. Then do you multiply 29.75 by 36½?

A. No, you multiply 29.75 by 63½—

3 Q. Well, you arrive at $18.89? A. Yes.

Q. And to that you add for crate 60 cents?

A. Yes, which makes $19.49.

Q. We are trying to arrive at the price which the jobbers shall quote in making this particular sale of a bathtub to a plumber? A. Yes.

Q. That is, in Zone No. 6; now, to calculate the freight to add to that you go to the nearest jobbing point? A. Yes.

Q. What is the nearest jobbing point here? A. Denver.

Q. In the State of? A. Colorado.

Q. And the shipment is to?

A. Cheyenne, Wyoming, from Denver, most probably.

4 Q. That is jobbers making sales to plumbers at Denver will cover Cheyenne, Wyoming, is that right? A. Yes.

Q. And that is a typical example of the application of the use of this price list by jobbers in making sales to plumbers, is that right? A. Yes.

Q. Then, in that last example we have given, add the freight from Denver, the nearest jobbing point to Cheyenne, and that makes the freight delivered at—

A. (Interrupting): Twenty-five cents.

Q. Now, look at the example which you have given in your book for Zone 7; that is another similar type, is it not? A. Yes. 1

Q. And that is "Wanted delivered price at Pocatello, Idaho, of one five foot two year tub;" the nearest jobbing point is where? A. Salt Lake City, Utah.

Q. I show you Petitioner's Exhibit 41, which is the price list as of June 1, and I direct your attention to Schedule 4½ on page 27, which is the 143rd page in the book. That page gives the prices on roll rim sink combinations, is that right? A. Yes.

Q. A roll rim sink combination is an article on which the drain boards are adjustable, is that right according to the forms set out on that particular page? A. Yes. 2

Q. The drain board, then, may either be wood or enameled iron ware? A. Yes.

Q. In some cases they are sold with enameled iron ware drain boards and in some cases with wooden drain boards?

A. Yes.

Q. Now, the prices given at the bottom of that page show what the jobbers shall sell the plumber at?

A. No, the prices explain what the manufacturers charge when the drain boards are enameled; you will note that it says, for wood drain boards you are to deduct so much. 3

Q. The price list, for instance, for A, at the top of the page, is stated as $33; is that right—that is at 250 pounds shipping weight? A. Yes.

Q. Does that include enameled iron drain boards or wooden drain boards?

A. That includes enameled drain boards, painted legs and brackets.

Q. If the jobber wants wood drain boards the deductions stated on that page are made, is that right? A. Yes.

Q. For each wooden drain board? A. Yes.

Q. There are provisions on that page also applying to charges for adjustable legs and the prices of enameled legs, is that right? A. Yes. 4

Q. Now, when the jobber has indicated a preference for wooden drain boards does the manufacturer send wooden drain boards?

A. That is if he furnishes them; some of them don't furnish them, I believe.

1 Q. Supposing a manufacturer does not furnish wooden drain boards, what would the price be?

A. The price of the enameled iron ware less whatever the charges for wood.

Q. Then it rests with him whether to send or not to send the wooden drain board?

A. Well, the jobber may not order the wooden drain board from the manufacturer.

Q. If he ordered the wooden drain boards, does he get them? A. Yes.

Q. If the jobber orders roll rim sink combinations with
2 wooden drain boards, what price must the manufacturer quote? A. I don't say that the price on—

Q. (Interrupting): I say if the jobber orders a roll rim sink combination with a wooden drain board, what price must the manufacturer quote?

A. The price given on page 27 for enameled drain board less the deduction made for the wooden drain board.

Q. The amount of which deduction is stated on that page? A. Yes.

Mr. GROSVENOR: Now I offer in evidence three patents. These are offered as follows, the Arrott
3 patent as "Petitioner's Exhibit No. 134;" the Ditheridge patent as "Petitioner's Exhibit No. 135," and the Lindsay patent as "Petitioner's Exhibit No. 136."

Papers referred to were then marked and filed as "Petitioner's Exhibits Nos. 134, 135 and 136" respectively.

Q. Will you look at the petition, Mr. Wayman, at the list of the names of corporation defendants on the first page, and state what officers of the Standard Sanitary Manufacturing Company you have seen respecting the assignment
4 of that Arrott patent to you?

A. I have seen Mr. Ahrens, Mr. Myler, Mr. Dawes, and F. J. Torrance, with respect to the assignments in so far as the entire proposition was concerned.

Q. That is, you spoke to them with regard to the Standard Sanitary Manufacturing Company entering into a license agreement with you? A. Yes.

Q. Take A. Weiskittel, Sons & Company, what officers did you see with reference to that?

A. John D. Weiskittel and Anton Weiskittel. 1

Q. Did you have any dealings with John D. Heise?

A. No.

Q. What position does he hold?

A. I don't know; he holds an office, but I don't know what it is. It is stated here (indicating) that he is secretary.

Q. The next is the Barnes Manufacturing Company; what officers or directors of that company did you see respecting the entering into of this licensing agreement by their company?

A. Mr. Barnes, the secretary and treasurer. 2

Q. Did you ever see Mr. Voegele?

A. No, I never met him.

Q. The next company is the Cahill Iron Works. Whom did you see of that firm?

A. F. H. Caldwell, the president, and Mr. J. J. Mahoney.

Q. And of the Colwell Lead Company?

A. Mr. J. T. Duryea.

Q. Take the Day-Ward Company, whom did you see in that company? A. Mr. A. G. Ward.

Q. Did you ever see Mr. Winfield? A. No. 3

Q. And the Humphryes Manufacturing Company?

A Mr. D. A. Carpenter.

Q. And the Kerner Manufacturing Company?

Q. Mr. J. A. Frauenheim.

Q. And of the J. L. Mott Iron Works, whom did you see?

A. Mr. Edward Hammann and a Mr. Bowman, I believe that is his name.

Q. You did not see Mr. Mott? A. No.

Q. Or correspond with him? A. No.

Q. Of McVay & Walker, whom did you see? 4

A. Mr. Alex Walker.

Q. Of the McCrum-Howell Company whom did you see?

A. Mr. Howard T. Gates, the secretary.

Q. And of the National Sanitary Manufacturing Company? A. Mr. F. G. Borden, president.

Q. Did you ever see Mr. Davis?

A. Not with respect to this proposition.

Q. Have you seen him with respect to the carrying out of the license contract? A. No.

1 Q. And of the Union Sanitary Manufacturing Company, whom did you see? A. C. E. Gates and E. V. Brigham.

Q. Did you see Mr. Huesmann? A. No, not at that time.

Q. It seems to me we introduced a letter from Mr. Huesmann, didn't we?

A. I don't think so, not previous to this license agreement.

Q. Any of these men that you have not seen have you corresponded with about carrying out the license agreement? A. No.

Q. Of the United States Sanitary Manufacturing Com-
2 pany whom did you see?

A. Mr. A. H. Cline, Jr., and Mr. C. F. Arrott.

Q. And of the Wolff Manufacturing Company?

A. John Clifford—

Q. How about Mr. Wolff? A. No.

Q. How about Mr. Hoelscher? A. Yes, Mr. Hoelscher.

Q. And for the Wheeling Enameled Ware Company, whom did you see or correspond with? A. J. E. Wright.

Q. And Mr. Franzheim?

A. I think I may have had one or two letters with Franzheim.

3 Q. About carrying out the agreement?

A. No, about one or two details concerning the agreement after it was entered into, or possibly before, I am not positive.

Q. At request of counsel you identified Exhibit 16 of the Government's petition as a letter which you wrote. I show you a copy of that letter. Is that correct (indicating)? A. Yes.

Mr. GROSVENOR: I introduce that in evidence as "Petitioner's Exhibit No. 137."

Letter referred to was marked and filed as "Petitioner's Exhibit No. 137."
4

Mr. GROSVENOR: I will read that letter:

"Edwin L. Wayman

"W-6181013-R

June 18, 1910.

"Chandler Pump Company,
Cedar Rapids, Iowa.

"Gentlemen:

"I am in receipt of your telegram of today stating

that you do not feel justified in signing at present. I trust you will see your way clear to execute this agreement within the next few days as it covers a matter which is entirely for the jobbers benefit. The Cedar Rapids Pump Company of your city, have executed the agreement, and I hope you will co-operate immediately with your local competitors, which will be much more advantageous than a continuous cut market. 1

"Will you not telegraph me upon receipt of this letter that you will execute the agreement in order that the matter may be adjusted in your city at once. 2

"Yours very truly,

"E. L. Wayman."

Q. Have they executed an agreement? A. No.

(NOTE: Counsel for the respective parties hereby stipulate and agree that the cross examination of the witness, Wayman, shall be made at a later date and inserted, together with the re-direct examination immediately after the testimony of the witness which has been given.)

Examination Suspended. 3

4

1 GEORGE H. BAILEY, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Bailey, you are the President of the Bailey-Farrell Manufacturing Company of Pittsburg? A. Yes, sir.

Q. They are jobbers of plumbing supplies? A. Yes, sir.

Q. Selling bathtubs and other sanitary enameled iron ware? A. Yes, sir.

Q. You appear here upon subpœna of the Government?

2 A. I do.

Q. You were subpœnaed to produce certain papers; have you them with you? A. Yes, sir.

Mr. GROSVENOR: Will you please produce them?

The witness then did as requested.

Q. First I want a copy of your No. 2309 order, dated June 1, 1910, to the Day-Ward Company, of Warren, Ohio?

A. I have it, but I think there is a discrepancy in the number there.

Q. You are subpœnaed for No. 2309? A. Yes, sir.

Q. And this is not that number? A. No.

3 Q. Is that your office copy of the order sent to the Day-Ward Company on that date? A. Yes, sir.

Mr. GROSVENOR: I offer that as "Petitioner's Exhibit No. 138."

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 138."

Q. You are subpœnaed to produce the reply of the Day-Ward Company, which is dated June 6, 1910; have you that?

A. No, I haven't that. I gave that by request to Mr.

4 Darling.

Q. I show you a letter which is on the letterhead of the Day-Ward Company, Warren, Ohio, U. S. A., and dated June 6, 1910, and addressed to the Bailey-Farrell Manufacturing Company. Is that the letter of reply?

A. Yes, this is the letter.

Mr. GROSVENOR: I offer that in evidence without the stamp and without the words "Part of Exhibit No. 2."

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 139." 1

Mr. GROSVENOR: I will read this exhibit (reading):

"June 6th, 1910.

"Bailey-Farrell Mfg. Co.,
Pittsburg, Pa.

"Gentlemen:—

"We acknowledge receipt of your order #2309 of June 1st. 2

"In regard to this order, would say that owing to the earnest solicitation of the Jobbers to establish a resale price, we, as well as the other Manufacturers, agreed not to take any business beyond June 1st, so that the resale price could be put into effect at that time.

"Under our agreement and terms with the Licensee, we are not permitted to fill this order at any other price than that mentioned in the Jobbers' Agreement which we mailed you Saturday. If this is satisfactory, kindly sign this Agreement and return to us, 3 and we will fill the order.

"Would advise that we are today writing a large number of our customers practically along the same line as this. Would also say that the success of the Resale Agreement, to a great extent, depends upon the hearty co-operation of the Jobbers. It will perhaps be a little hard the first thirty or sixty days in getting it started, but with your co-operation, as well as that of the other Jobbers, we think there is no reason why this will not go through.

"Yours truly,
"THE DAY-WARD CO., 4
Per A. G. Ward."

Q. Did you sign the Agreement to which he referred in that letter? A. I did not.

Q. Your subpœna calls for No. 2389, dated June 1, 1910, to the United States Sanitary Manufacturing Company of Pittsburg, Pennsylvania; have you that with you?

A. That is the one—I am unable to find that order—

that is as near as I can come to it, and I think that is the one referred to.

Mr. GROSVENOR: Well, that is No. 2399, so I will not offer it.

Q. Did you receive, about June 7, 1910, this letter from the United States Sanitary Manufacturing Company?

A. I did.

Q. Is this letter (indicating) which you hand me, is that the letter to which you refer? A. Yes, sir.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 140," without the stamp or words "Part of Exhibit No. 2."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 140."

Mr. NOBLE: I object to the admission of this letter and also desire to have my objection noted to the previous letter, which is marked "Petitioner's Exhibit No. 139," as being incompetent, irrelevant and immaterial, and as in no way binding anybody except the particular writers of the letter, no conspiracy having been proved between the various Defendants.

Mr. GROSVENOR: You do not object on the ground that the letters have not been properly proven?

Mr. NOBLE: Oh, no.

Mr. GROSVENOR: I will read this letter, which is marked "Petitioner's Exhibit No. 140" (Reading):

"June 7, 1910.

"The Bailey-Farrell Mfg. Company,
Pittsburg, Pa.

"Gentlemen:—

"We received in this mornings mail your order #2389, but as we have not as yet received your signed license contract and our license agreement with Mr. Wayman makes it imperative that we receive this contract before entering any orders, we cannot enter this order until we receive same.

"Yours very truly,
"UNITED STATES SANITARY MFG. CO.,
"A. H. Cline, Jr.,
Secretary."

Q. Have you signed a license contract with the United States Sanitary Manufacturing Company? 1

A. No, sir; we have not.

Q. Have you signed any license contract?

A. We have not.

CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Bailey, the goods which were referred to in these orders which counsel for the Government asked you about, you later obtained those goods, did you not—that is, these or similar goods?

Mr. GROSVENOR: I object. What do you mean by "similar"? Do you mean from another manufacturer? 2

Mr. NOBLE: From a licensed manufacturer.

Mr. GROSVENOR: I object, because the question should be, did he obtain them from the people to whom the order was addressed.

Q. Well, did you get these goods from the companies later to whom you wrote in respect to these particular orders?

A. I don't know. We may have gotten that one order from the United States, or its equivalent. I cannot say positively. I am under the impression that we did. The Day-Ward Company order we did not get, I think. 3

Q. But you got goods similar to the ones you ordered from the Day-Ward Company, from other licensed manufacturers, did you not?

A. I think not—not from licensed manufacturers. I don't know, that is a detail about which I cannot say exactly.

Q. So you don't want to be understood as saying that you did or did not get those goods? 4

A. I am not able to say definitely.

Q. You buy sanitary enameled iron ware goods continually, do you not? A. Yes.

Q. And you get the enameled ware goods manufactured by some of the licensed manufacturers, do you not?

Mr. GROSVENOR: State the date specifically.

THE WITNESS: Since when?

Mr. NOBLE: Since June 1, 1910.

A. On orders placed previously, yes, but otherwise not direct.

Q. You buy these goods from other jobbers since this time? A. Yes.

Q. And you have no difficulty in getting them?

A. Yes.

Q. You buy goods from other licensed manufacturers?

A. Yes.

Q. And have no difficulty getting them? A. No.

Q. And are able to buy sufficient to supply your needs? A. Yes.

Examination concluded, and signing of deposition waived by agreement of counsel for the respective parties.

JOHN A. KELLY, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Mr. Kelly, what is your business?

A. Manufacturing sanitary enameled ware and iron sanitary enameled ware.

Q. What company are you connected with?

A. The Iron City Manufacturing Company of Pittsburg.

Q. Are you active Manager of that Company?

A. Yes, sir.

Q. Of the distributing end? A. Yes, sir.

Q. How long have you held that position?

A. Seven years.

Q. Where is the factory or the factories of the Iron City Manufacturing Company located?

A. Zelienople, Pennsylvania.

Q. Do you make up your goods there? A. Yes, sir.

Q. Are they goods of the type advertised in this pamphlet, I mean are they porcelain enameled goods?

A. Yes, sir; porcelain enameled iron goods.

Q. These licensed companies—that is the Standard Sanitary Manufacturing Company and the others whose names have been mentioned—they are competitors of the Iron City Manufacturing Company? A. Yes, sir.

Q. The products of the Iron City Manufacturing Company are sold throughout the United States? A. Yes, sir. 1

Q. In the Eastern States more than in the Western?

A. Yes, sir.

Q. But their sale is wide outside of the State of Pennsylvania, is that right? A. Yes, sir; very much so.

Q. In making your sales, you make shipments to jobbers in the various cities of the United States? A. Yes, sir.

Q. Or you make shipments direct to the customers through the jobbers? A. Yes, sir; on their orders.

Q. That is, on orders received by you from the jobbers?

A. Yes, sir; we do not sell the plumbers or the trade direct, but we ship direct to them on orders charged to the jobbers. 2

Q. You sell to jobbers and then the customers buy from the jobbers? A. Yes.

Q. And some orders are shipped to the customers on the orders from the jobbers? A. Yes.

Q. That is the general way in which manufacturers of sanitary enameled iron ware sell their products?

A. No, that is the way we do it. I cannot answer except for ourselves. The Standard Manufacturing Company have jobbing houses and from those jobbing houses they sell the plumbers direct, and Wolff sells the jobbers and plumbers, but we only sell the jobbers. 3

Q. Does this blue book, which I show you, Mr. Kelly, embrace the names of the principal jobbers in the United States?

A. I don't think there is a large jobber in the country but what is in that book.

Q. That is to say, all the important jobbers in the United States will be found listed in this book?

A. Yes, sir. I would like to correct that—that is jobbers in the plumbing supplies—we don't mean hardware and paint jobbers. 4

Q. But jobbers who handle your goods will be found generally in that book? A. Yes, sir.

Q. Have you or has your Company entered into any license arrangement or agreements with Mr. Wayman?

A. No, sir.

Q. Has Mr. Wayman suggested to you or asked you to enter into a license arrangement? A. Yes.

Q. When did he first suggest to you that subject?

1 A. I would say the latter part of September or the beginning of October, 1909.

Q. From that time until the middle of the year, 1910, did Mr. Wayman see you at various times and speak to you about this proposed arrangement?

A. Yes, sir; I have had talks with Mr. Wayman, probably—I can't tell, but two or three times a month from that time up until the latter part of March, with regard to it.

Q. When you saw him in September or October, 1909, did he ask whether if such a plan was drawn up you would
2 go into it?

A. Well, he was outlining such a plan the first serious conversation we had about it, and I think he stated it was done in the electric business and he got his idea from the electric business, with which he was formerly connected and just talked in a general way about it, about the patents they had and so forth.

Q. To see how you felt about it, is that right?

A. Yes, we just talked it over in a general way.

Q. Has Mr. Wayman, at various times, given you papers embodying certain provisions of licensing arrangement?

3 A. He might have given me one or two, but the principal number of them were mailed.

Q. Most of them were mailed? A. Yes, sir.

Q. In the period from September, 1909, until May, 1910,— That is May 10, 1910—did you receive from him at various times, either by mail or in person, various proposed contracts? A. Yes, sir; at different times.

Q. I show you what has been introduced in evidence as Petitioner's Exhibit No. 108, and ask you if he ever gave you a similar paper to that?

A. Yes, sir; we have had one of them.

4 Q. When did you receive one like that from him?

A. I would say the latter part of November, or the early part of December, I don't know.

Q. And was a paper similar to Petitioner's Exhibit No. 109, which is an agreement between E. L. Wayman and the corporation, whose name is not given, was that attached to the paper similar to Exhibit No. 108 at the time?

A. Yes, sir.

Q. Did he say anything to you about this?

A. Yes, we talked about that.

Q. Did he ask you whether you would go into it? 1

A. Well, not in those particular words, because the details were not worked out, it was along similar lines, and it was proposed that way and given to us to look over.

Q. You mean the details in this contract were not worked out? A. Yes, sir.

Q. Did you look over it? A. Yes.

Q. What did you tell him, did you encourage him?

A. We did not discourage him.

Q. Did you receive another form of contract from him?

A. Yes, we received a number of them.

Q. I show the exhibits of the Petitioner marked Nos. 8 2
and 10, No. 8 being the sample copy of the proposed form of the license agreement and No. 10 being the proposed form of the jobbers agreement, and ask you if you got those? A. Yes, we got one of these.

Q. Did you discuss the matter again with Mr. Wayman?

A. Yes, we got these sample copies, or ones similar to these.

Q. Well, did you tell Mr. Wayman anything respecting that last form? Did you tell him you would go into it or would not?

A. Oh, we told him we would not go into it, but I 3
could not quote the language.

Q. Were you present at a meeting of manufacturers in Chicago in February? A. No, sir.

Q. Were you present at any of the meetings of the Manufacturers of Sanitary Enameled Iron Ware?

A. Yes, sir.

Q. At which the license agreement was discussed?

A. Yes, sir.

Q. Which was the first meeting that you recall at which that subject was discussed?

A. I might answer that it was discussed in school and 4
out of school, when the meeting adjourned and before it was called. It was always discussed, not as a license agreement, but something to better business conditions.

Q. When was the first license agreement discussed?

A. Let's see, the first, in a general way,—I think it was in the early part of December—December 1, at Pittsburg.

Q. Who spoke to you about it?

A. It was not discussed, but Mr. Ahrens, President of the Standard Sanitary Manufacturing Company, made a

1 remark that he and Mr. Torrance had made a trip to different parts of the country and there was a demand from the jobbers for a resale agreement. It was not discussed, but it was a little information which he volunteered.

Mr. NOBLE: I move that the answer be stricken out as not being responsive to the question. The question was about the license agreement.

Q. Was there a meeting of the licensed sanitary ware manufacturers on February 1, 1910?

A. Not to my knowledge. I was not there in Chicago.

2 Q. Were you present at any meeting in February when the proposed license agreements were discussed.

A. Yes, at Pittsburg.

Q. When was that? A. February 1.

Q. Who was present?

A. Mr. Cline was there, of the United States Sanitary Manufacturing Company; Mr. Hoelscher, of the Wolff Manufacturing Company; Mr. Barnes, of the Barnes Manufacturing Company; Mr. Myler, of the Standard Sanitary Manufacturing Company; Mr. Kohler, of the J. M. Kohler Sons Company, and Mr. Gates, of the Union Sanitary

3 Manufacturing Company.

Q. What was said about the license agreement?

A. After the regular meeting was adjourned, the license agreement was brought up and—I don't know, but everybody wanted to speak at one time when it was started, and then they asked for expressions of opinion going around the room, whether we were in favor or unfavorable to it.

Q. Who expressed themselves as favorable to it?

A. I could not say right off.

Q. Was Mr. Torrance in favor of it?

A. I don't think he was there. I remember Mr. Myler

4 was there.

Q. Was he in favor of it?

A. The question was brought up how we could do it unless the manufacturers had a price agreement among themselves, and that brought up a discussion.

Q. And some of the manufacturers were opposed to a price agreement?

A. Yes, Mr. Myler said that the Standard Manufacturing Company was.

Q. Then what was said?

A. Well, it went all around the room. I cannot quote at this day everybody's answer. It was just a discussion in general. 1

Q. Did the majority of those present express themselves as in favor of a license agreement? A. I would say yes.

Q. Did you express yourself? A. Yes.

Q. What did you say?

A. I said I did not think they could get up a resale price list without an agreement from the manufacturers and then I sat down.

Q. Did you want a price agreement?

A. Well, it has not been put yet in a right shape to meet with my approval. 2

Q. Why not? A. For business reasons.

Q. Was anything said at that meeting about the Arrott Patent?

A. I don't recall the name brought up, but I do remember the patent being mentioned.

Q. Did any manufacturer state that he was desirous of securing the Arrott patent?

A. No, not unless it was under the resale agreement alone. It was talk just about patents, not any particular patents, not a dredger or anything like that. 3

Q. When was the next meeting you attended?

A. The next meeting I attended was on March 29.

Q. Where was that meeting?

A. At the Hotel Astor, New York.

Q. Who were present there?

A. Mr. Barnes was there, of the Barnes Manufacturing Company; Mr. Caldwell, of the Cahill Iron Works; Mr. Laing of the Humphryes Manufacturing Company; Mr. Hammann, of the J. L. Mott Iron Works; Mr. Walker, of McVay & Walker; Mr. Gates, of the McCrum-Howell; Mr. Borden, of the National Sanitary Manufacturing Company; and Mr. Gates of the Union Sanitary Manufacturing Company; Mr. Cline and Mr. Arrott of the United States Sanitary Manufacturing Company; Mr. Hoelscher of the Wolff Manufacturing Company and myself and Mr. Torrance and Mr. Wayman. 4

Q. When did you meet, in the morning?

A. Yes, I think it was some time about eleven o'clock.

Q. In the morning?

A. Yes, sir; we were a long time getting together.

Q. Was anything said about a license agreement there?

A. Yes, sir.

Q. What was said?

A. Well, they asked an expression of opinion from everyone present.

Q. Who asked when you say "they"?

A. Why, Mr. Torrance was in the chair at the time and he asked an expression of opinion from everyone present, as to how they stood about it.

Q. And did they go around to everyone in the room?

A. Yes, sir.

Q. And did everyone say whether or not he was in favor? A. They gave their answers.

Q. Did Mr. Torrance state whether or not he was in favor of it? A. Yes.

Q. Was he or not? A. He was.

Q. Were any reasons urged against the adoption of the plan? A. Well, one man questioned the legality of it.

Q. Who was that?

A. Mr. Caldwell of the Cahill Iron Works. I raised a legal question about it. They asked me personally about it and I told them I was on the fence and I did not know which side to come down on, but I was open to conviction.

Q. Conviction that it was legal?

A. That it was legal and good business policy to grant it.

Q. Who answered as to the legal questions? Was there or not any question as to the legality of it?

A. Why, yes; we had an address by Mr. Jackson.

Q. What did he say?

A. That is a hard proposition what he said. He talked at length.

Q. Did he mention the patent?

THE WITNESS: Which patent?

Q. Did he mention any patent?

A. No, he was reading off some decision, the Rubber Tire Cases and some others, and I was talking to some persons around there and he addressed the meeting at length with regard to patents in general.

Q. Did he go away then? A. Yes, he left.

Q. Then was the discussion renewed? A. I left.

Q. Were you there at the afternoon session?

A. This was early in the afternoon. 1

Q. And did Mr. Torrance preside in the afternoon when you were there? A. Yes.

Q. Were you there at the meeting the next day? A. No.

Q. When was the next time at which Mr. Wayman spoke to you about the license agreement?

A. After March 29— I would say about three weeks afterwards.

Q. Did you see him in Pittsburgh? A. Yes, sir.

Q. Did he come to see you?

A. No, I think we met at the restaurant there. I don't know whether he called up or whether I called up. 2

Q. Did he urge you to enter? A. Yes.

Q. What did you tell him? A. No.

Q. Did any one else refuse to enter about this time?

A. No, I didn't see anyone else at that time.

Q. And did anyone else ask you to enter the licensing arrangement during May? A. No.

Q. Or July?

A. I cannot recall about July. It was in June—

Q. Was it in August?

A. No, no person else, it was only Mr. Wayman in August again. 3

Q. Who, if any one, suggested to you that you should enter into the licensing arrangement? A. Mr. Torrance.

Q. Where? A. At Toledo.

Q. When? A. About the middle of June.

Q. Of this year? A. Yes, sir; and Mr. Cline.

Q. Where? A. The same place.

Q. The same time? A. Yes, the same time.

Q. Anyone else?

A. That is, within a couple of hours—the same afternoon; also Mr. Gates of McCrum-Howell.

Q. Where? 4

A. The same place and same time, that is about all I can remember in June.

Q. Did Mr. Torrance at any other time suggest that you should enter into the arrangement?

A. Yes, in Philadelphia.

Q. When was that? A. June 29.

Q. Was anybody with him at the time?

A. Mr. Wayman.

Q. What did he say?

1 A. Well, we had a general talk there. It was quite lengthy and we went over the whole thing and re-hashed it.

Q. Did you talk about anything else except this licensing agreement?

A. That was the principal object of our being there, of course.

Q. How did you happen to be there?

A. I was asked to come over.

Q. Who asked you? A. Mr. Wayman.

Q. He asked you to come over to see whom?

A. To have a conference. He didn't say to come over
2 to see anyone, but to have a conference.

Q. Did he ask you to come over to see anyone?

A. Yes, Mr. Boardman, of Ronalds & Johnson Company, Brooklyn.

Q. Are they jobbers? A. Yes, sir.

Q. Who else?

A. Mr. John Fleck, of Fleck Brothers & Company, Philadelphia.

Q. Are they jobbers?

A. Yes, sir; and Mr. Thorndyke, of the F. W. Webb Manufacturing Company, of Boston.

Q. Did all these people meet together there?
3 A. Yes, sir.

Q. And these men whom you have named, did they discuss with you this subject?

A. Well, I discussed it with them before, that is with the jobbers, on previous trips.

Q. Have you seen Mr. Torrance at any other time since May, 1910, in respect to the matter?

A. Let's see—that was June, July—no, not to discuss the license agreement.

Q. Was anything said at this March meeting about the per cent. of business?

4

THE WITNESS: How do you mean?

Mr. GROSVENOR: The per cent. of the enameled iron ware business which would go into the licensing arrangement.

Mr. NOBLE: I object to the question as leading.

Mr. GROSVENOR: Put it this way: Was there or not anything said at the March meeting about the percentage of manufacturers and of the business which

should go into the licensing agreemeit which would make it a success? 1

A. Mr. Jackson made a remark that they ought to have about 85 per cent.

Q. Did he say why?

A. It would look better, or language equivalent.

Q. This licensing arrangement or agreement went into effect June 1, or about that time? A. June 6.

Mr. NOBLE: How does this witness know that when he is not a party to it?

Q. Did some of the jobbers who had bought goods of you prior to June 6, decline to buy thereafter? 2

Mr. NOBLE: Objected to as incompetent, irrelevant and immaterial. They might have declined to buy for some reasons which have nothing to do with this matter at all.

A. Yes, sir.

Q. Did they assign any reason? A. Yes, sir.

Q. What was the reason?

A. Because we did not sign the license agreement.

Q. Do you know whether Ronalds & Johnson have signed this license agreement? A. As far as I know they have not. 3

Q. At this meeting in Philadelphia, you say Mr. Boardman represented Ronalds & Johnson? A. Yes, sir.

Q. And Webb & Company—are they jobbers?

A. Yes, sir.

Q. And Mr. Thorndyke represented them? A. Yes, sir.

Q. Did he sign the license agreement?

A. Not to my knowledge.

Q. Were there any others there? A. Mr. Fleck.

Q. Did he sign? A. No, sir.

Q. And you did not sign? A. No, sir. 4

Q. Did Mr. Torrance urge these jobbers to sign this license agreement?

Mr. NOBLE objected to the question as incompetent, irrelevant and immaterial.

Q. Well state whether Mr. Torrance said anything or not to any of these jobbers about entering into this license agreement?

A. Well, there were two rooms there; I was in one room and the two others were in the other. Mr. Torrance and Mr. Wayman talked to the jobbers and when they got through I went in and talked to them. In other words, they tried to win them over to their side and I tried to keep them on my side. What was said by them, of course, I don't know.

Mr. NOBLE: I move to strike out the answer. The witness says he don't know what was said.

Q. These three jobbers are still customers of yours?

A. Yes, sir.

Q. You then kept them? A. Yes, sir.

CROSS EXAMINATION BY Mr. NOBLE:

Q. Does your Company manufacture a full line of sanitary enameled iron ware?

A. I don't know how to answer that. We don't manufacture everything that is made.

Q. Substantially a full line? A. Fairly complete line.

Q. A fairly complete line? A. Yes, sir.

Q. How many furnaces have you in your plant?

A. About twelve active.

Q. How many are not active?

A. None. They are all running—that is, they are all in good condition.

Q. You sell, as I understood you to say, to jobbers and not plumbers? A. Yes, sir.

Q. Mr. Grosvenor shows you what he calls the blue book; are you familiar with that book? A. More or less.

Q. I understood you to say substantially all the names of the large jobbers in the United States were in that book?

A. I don't know of a jobber that is not in it.

Q. Do you know jobbers whose names do not appear in the Blue Book?

THE WITNESS: Outside of the Blue Book?

Mr. NOBLE: Yes.

A. I don't suppose we have any on our lists whose names do not appear in there.

Q. Yours is an active factory, is it not, Mr. Kelly?

A. Yes.

Q. You do your share of the business?

A. I think we do. 1

Q. You are active in pushing it? A. Yes.

Q. Is your business local, that is around your factory, or does it extend generally throughout the country?

A. Principally East, but we do it from ocean to ocean.

Q. In practically all the States of the Union?

A. No, sir.

Q. Well, in all the sections of the country?

THE WITNESS: I don't know what you mean by sections.

Mr. NOBLE: Well, the different parts. Do you do business in the East? 2

A. Yes.

Q. The West? A. Yes.

Q. And in the North and South?

A. Yes, but not much in the South.

Q. That is of your own choosing, that you do not do business there? A. Well, choice and necessity.

Q. You mean that you have not extended your business into the South? A. Yes.

Q. Have you made any efforts to do so?

A. Not any particular efforts. 3

Q. Are you doing so now?

A. No, sir; and we have not in the past.

Q. Do you have any difficulty in selling your wares outside of the ordinary commercial difficulties which we usually have? A. At present, no.

Q. You make high grade materials, don't you?

A. Yes, sir.

Q. Do you use what is known as the hand process?

A. In part, yes.

Q. Do you use an automatic process? A. Yes.

Mr. GROSVENOR: This is new ground which you are covering. 4

Mr. NOBLE: Counsel for defendant replies that counsel for Government interrogated about the manufacture of sanitary enameled iron ware and I am just following that up.

Q. Do you use the automatic process quite generally in your factory?

A. I would say about half and half, or 60 per cent. is

1 done by hand, and 40 per cent automatic; I don't know exactly.

Q. Now, I understood you to say that Mr. Wayman first suggested this idea to you about a license under patents some time in September or October of 1909? Is that correct? A. Yes, sir.

Q. Had you prior to that ever heard of any licensing scheme under patent? A. No, sir.

Q. The first time a person ever discussed such a thing with you, then, was Mr. Wayman? A. Yes, sir.

Q. And that was along in September or October, 1909?

2 A. Yes, sir.

Q. Along about the end of the year, 1909, or early in January, 1910, do you remember Mr. Wayman saying to you, or handing to you, a paper to the effect that he had made an arrangement with the Standard Sanitary Manufacturing Company to get the Arrott patent, and outlining a scheme for licensing manufacturers under that?

Mr. GROSVENOR: That is a pretty broad question, is it not?

A. I think about the latter part of December he mentioned something about being able to get hold of the Arrott

3 patent and that Wolff would throw in a lot of patents. In other words, we spoke of patents in general.

Q. He said he could get the Standard patents?

A. Yes.

Q. And one from Wolff? A. No, several from Wolff.

Q. And did he say he could get any from anybody else?

A. He talked of getting one of ours.

Q. What is the name of that patient?

A. The Nesbit patent.

Q. That is the automatic patent which you use in your factory? A. Yes, sir.

4 Q. You said at times when you met Mr. Wayman, from October down to May, he discussed the idea which he first presented to your mind in October or September; is that correct?

THE WITNESS: What idea?

Mr. NOBLE: The licensing of you and other sanitary enameled iron ware manufacturers under patents?

A. Yes, he talked along those lines.

Q. I understood you to say that at times when the manufacturers were together before and after meetings Mr. Wayman also discussed that with you and with the other manufacturers; is that correct? 1

A. No, sir; he did not discuss it with me, because we talked about it here in the city off and on; our offices are only about four squares from each other.

Q. This idea of licensing the manufacturers of sanitary enameled iron ware was his idea? A. Yes, sir.

Q. He was the first person who ever talked to you about it? A. Yes, sir.

Q. And as far as you know, he was the first person who talked to the other manufacturers about it? 2

A. Yes, as far as I know.

Q. And you never talked to the other manufacturers about it until Mr. Wayman had talked to you about it?

A. No.

Q. And they never talked to you about it before that time?

A. No; everybody seemed to be familiar with it and every where we met somebody started to talk about it.

Q. In other words, somebody had talked to those other manufacturers and given them the idea of the scheme the same as Mr. Wayman had given it to you? A. Yes. 3

Q. And they all understood what the plan meant?

A. Yes, they all understood what the plan meant. That is, they seemed to.

Q. Let me see what Mr. Wayman said about the scheme having been in vogue in the electrical business in which he had formerly been engaged; what did he say about that?

A. Well, if I recollect, right, he said that he got his ideas from the electric business in which he was formerly engaged, and he had a copy of an agreement of theirs with patents on it or some kind of a contract which they had to make. I did not read it over. I just looked at it and handed it back and he gave me the idea that he got his idea from the electrical business and they were going along those lines. 4

Q. And he suggested to you that this would be a good thing for the manufacturers of sanitary enameled iron ware to do, is that it? A. Yes.

Q. Did you read any of the papers that Mr. Wayman handed to you from time to time containing outlines of

this scheme? I understood you to say to counsel for the Government that you did receive such papers?

A. Yes, sir; and I gave them to those people.

Q. To counsel for the government? A. Yes.

Mr. GROSVENOR: At our request, after subpœna was served.

Q. You say after the meeting here in Pittsburgh, you say there was some discussion about the license agreement, that is after February 1st? A. Yes.

Q. Do you remember Mr. Wayman saying anything on that occasion? A. I don't recall distinctly.

Q. Do you remember that Mr. Wayman was there?

A. Yes, sir.

Q. Do you remember when the meeting was over and before you went away he got up and said that he wanted to say something about the plans which he had talked about to you and the other manufacturers individually?

A. I do not recall exactly.

Q. Well, who did the talking?

A. Everybody was talking.

Q. Do you recall that Mr. Wayman opened the discussion? A. I don't recall who opened it.

Q. Didn't you say that Mr. Myler said that the Standard Sanitary Manufacturing Company was opposed to a price agreement? A. Yes.

Q. He did not state that they were opposed to a licensing agreement?

A. I do not recall whether that question was put to him in that way or not.

Q. In other words, the distinction you are making is a price agreement without reference to patents on the one hand, and the license agreement with patents on the other; is that what you mean?

A. They were talking about a resale, about the manufacturers getting together, and I raised the question that I did not think they could get a resale without a price agreement to start with among themselves, and Mr. Myler said that the Standard Sanitary Manufacturing Company was opposed to a price agreement and that ended the conversation between us.

Q. In other words, Mr. Myler said to you that the

Standard Sanitary Manufacturing Company was opposed to a price agreement among the manufacturers? 1

A. Yes, sir.

Q. Have you been a member of the Sanitary Enameled Ware Associations for the last several years?

A. No, only the last.

Q. What was the name of that?

A. I don't know, but E. L. Wayman was the Commissioner.

Q. You mean the one which disbanded on June 1st, of this year? A. Yes.

Q. Were you present at the meeting when Mr. Wayman was elected? A. Yes, sir. 2

Q. Do you remember how that came about?

A. Yes, sir.

Q. Will you please state?

A. Mr. Cline read an application from him.

Q. Mr. Cline?

A. Yes; it was addressed to Mr. Cline and he said that he had heard of the Association and made an application for the position of Commissioner or the Secretary, whatever you term it.

Q. How was he elected? 3

A. His name was proposed and another gentleman, and he was elected by ballot.

Q. There were two candidates, and then Mr. Wayman was elected? A. Yes, sir; Mr. Wayman was elected.

Q. Were there some votes for the one man and some for the other? A. Yes, sir; it was not unanimous.

Q. Now, Mr. Kelly, Mr. Grosvenor asked you when was the next meeting after the February 1st meeting, and you said the March 29th meeting in New York, as I understood you? A. Yes, sir.

Q. That meeting was called by whom? A. Mr. Wayman.

Q. And the people there were the manufacturers of the sanitary enameled iron ware? A. Yes, sir. 4

Q. Was that a meeting called by him specially, at his request?

THE WITNESS: At whose request?

MR. NOBLE: Mr. Wayman's.

A. Mr. Wayman called all the meetings.

Q. Did you go to that meeting pursuant to Mr. Wayman's request that you come? A. Yes.

1 Q. Had he talked to you before hand? A. Yes.

Q. Did he tell you what he was going to bring up?

A. Yes, sir.

Q. What did he say it was?

A. He told me to come over and he would try to convince me by Mr. Jackson's talk that we were wrong about the legal part of it.

Q. Did you go? A. Yes, sir.

Q. Were you there when the meeting came to order?

A. Yes, sir.

Q. Do you remember who first got up and talked?

2 A. I think it was Mr. Wayman.

Q. Did Mr. Wayman say to the manufacturers anything about the exhibits Nos. 8 and 10 which were the proposed jobbers' agreements which Mr. Grosvenor showed to you and which I now show to you? A. I don't recall.

Q. Mr. Wayman had given or sent to you before the meeting these exhibits? A. Yes, sir.

Q. And when he first got up and talked, did he talk about these licenses? A. I don't recall.

Q. You do not remember what he said?

A. I don't remember him talking about that. He talked
3 about everybody knowing what they were over there for and so forth and then Mr. Torrance took the chair.

Q. You were over there to express an opinion, were you not?

A. Yes, sir; to talk it over, listen to Mr. Jackson and bring along any unfilled orders.

Q. Then, the meeting was called for considering and expressing your opinions on Mr. Wayman's proposed license plan, is that correct? A. Yes, sir.

Q. After Mr. Wayman's talk, you say Mr. Torrance was elected chairman; do you remember how that happened —was it by ballot?

4 A. I don't remember a ballot being taken.

Q. You do not remember how he was elected Chairman; was it by *viva voce* vote?

A. I think he just took the chair because he was Vice-President of the Executive Committee and because the President was not there and the Chairman of the Board was not there, and he just took the chair, as he was entitled to.

Q. You do not remember whether he was elected or not for that occasion? A. I don't think he was. 1

Q. And you are not testifying so much from memory as from the way it should go as you understand it?

A. That is the way I think it should go; I don't remember a ballot.

Q. You say Mr. Jackson talked to the meeting?

A. Yes, sir.

Q. What did he say?

A. He was reading off some decision in some of the Circuit Court cases about some other lines of business conducted under patents; and I remember him using the words, "Now, mind, I am not up on the technical part of your business. Is it necessary to use this dredger to produce or make enameled ware economically, successfully and a good article?" To that question four or five answered yes. He said, "If such is the case, I tell you, gentlemen, you can go ahead and do this legally." I cannot quote all which he said. There was another remark about what effect it would have on the people who stayed outside, and he said that they ought to be inside and that they should get at least 85 per cent., that it would look better if they had 85 per cent. of the production in. 2 3

Q. That it would be better from a commercial end?

A. No, I thought he meant from the legal end. He said it was not necessary but that it would be a good thing to have 85 per cent.

Q. Now, after that morning or afternoon session, I understand you went away? A. Yes, sir.

Q. Since that time down during the months of May, June, July and August, I think Mr. Wayman asked you from time to time to take a license under his patents, is that correct? A. Yes, sir.

Q. And you said that the matter had not been put in a right shape for you to do so? 4

A. Well, we have not signed it yet.

Q. You said that you had not signed it for business reasons? A. Yes; and legal reasons too.

Q. Now, have you asked the jobbers with whom you do business whether or not it would be agreeable to them if you did take a license, whether they would like the jobbers' licensing plan, previous to the meeting in Philadelphia which you told Mr. Grosvenor about?

1 THE WITNESS: What is that question again, please?
The stenographer then read the cross question.

A. Some of them were not favorable to it.

Q. And the others?

A. There were some that were favorable.

Q. Those were the business reasons why you did not go into this thing, is not that so? A. No.

Q. Now, you said that Mr. Torrance talked to you in Toledo and Mr. Cline and others; I understood you to say that they met you at different times of the day and that you would talk about it, is that correct?

2 A. There was a meeting of another association there and these gentlemen were present and Mr. Wayman and I got talking and we came up to my room to talk, and while in conversation there the other gentlemen dropped in and more or less during the day I ran up against others in our line of business.

Q. In other words, these were just casual talks as you happened to meet? A. Yes, sir.

Q. This was a meeting of jobbers of sanitary enameled iron ware in Toledo, wasn't it?

A. Jobbers of plumbing supplies; we did not go over
3 there to confer especially on this license agreement.

Q. That was a meeting of jobbers in plumbing supplies?

A. Yes, sir; plumbing supplies generally.

Q. And had nothing to do with this license agreement?

A. No.

Q. Were you present at the meeting of those jobbers when the Attorney General of Ohio talked about the legality of licenses under patents?

A. He talked at a meeting, but I did not hear it. I was in my room at the time.

4 MR. GROSVENOR: I think you have that confused with a meeting of the Central Supply Association, which was about a different matter.

MR. NOBLE: No, there were two occasions.

MR. GROSVENOR: I object anyway, as it is irrelevant and incompetent.

Q. You were asked by Mr. Wayman to go over to Philadelphia for a meeting, were you not?

A. Yes, sir; and by Mr. Torrance.

Q. Did Mr. Fleck call you up over the telephone and ask you to go? A. No, sir; not that I remember. 1

Q. At one of the talks you had with Mr. Wayman, did you tell him that you had about concluded to take a license agreement from him and the matter would later be decided at Directors' meeting to be had?

THE WITNESS: What was that?

The stenograher then read the cross question.

THE WITNESS: Which meeting have you reference to?

Mr. NOBLE: Any meeting.

A. Yes, sir; I said that we would take a license agreement on certain conditions, provided they could satisfy our Directors that it was legal, but not the present license agreement as constituted, that we would sign. 2

Q. Do you remember when that was?

A. It was about the 29th or 30th of June, in Philadelphia.

Q. Do your goods sell generally, type for type, at about the same prices as the licensed manufacturers' goods?

THE WITNESS: Now or a year ago or two years ago? 3

Mr. NOBLE: Oh, generally.

Mr. GROSVENOR: I think that question should be made more specific.

Mr. NOBLE: Now, then: At this time?

Mr. GROSVENOR: Prices to the jobber, plumber, or customer?

Mr. NOBLE: He says that he sells to the jobbers only?

THE WITNESS: What do you mean—what we are selling to the jobbers at?

Mr. NOBLE: Yes. 4

A. No, we are selling to jobbers at a cheaper price than the licensed manufacturers are.

Q. Much less A. Yes.

Q. Can you state the percentage less?

Mr. GROSVENOR: I object to that question.

A. I cannot do that very well.

RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Noble asked you whether you were having

any difficulty now marketing your products, that is to the jobbers; when that licensing agreement went into effect in June, did you for a time have any difficulty?

A. Well, we were kept busy going around the country trying to make arrangements to market our output for the balance of this year.

Q. Mr. Noble has asked you as to the reasons on account of which you did not go into the license agreement; what was the principal reason?

A. The first thing, we want to run our own business and not turn it over to anybody else, and the second was the legal end of it.

Q. What was the legal end of it?

A. Whether there would not be something happen like is happening today.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

The taking of testimony was then adjourned to the fourth day of November, 1910, at the Post Office Building in Chicago, Illinois, at 10.30 o'clock a. m.

Post Office Building,
Chicago, Illinois, November 4, 1910.

Pursuant to adjournment, the evidence for the Petitioner was resumed as follows, with same counsel present.

WALTER J. KOHLER, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. What is your business?

A. I am a manufacturer of porcelain sanitary enameled iron ware.

Q. What is your connection with the J. M. Kohler Sons Company? A. I am president and treasurer.

Q. Where is the factory or the factories of that company?

A. Sheboygan, Wisconsin.

Q. Where have they offices? 1

A. In New York City, Chicago and San Francisco.

Q. And Sheboygan, of course?

A. Sheboygan is the general office.

Q. Has your company executed any license agreement with E. L. Wayman? A. It has not.

Q. Will you state, Mr. Kohler, the principal articles of sanitary enameled iron ware which your company manufactures?

A. Bathtubs, lavatories, laundry tubs and sinks.

Q. Kitchen sinks, do you mean?

A. Of all kinds; closets, urinals—we manufacture a 2
complete line of porcelain sanitary enameled iron ware.

Q. In the trade, what is the most important of the articles you have mentioned?

A. Baths, lavatories and sinks.

Q. Kitchen sinks? A. Yes.

Q. And in the term "kitchen sinks" you include the other kinds of sinks? A. Several kinds and varieties.

Q. "Lavatory" is the trade name for a wash-bowl?

A. Yes, wash basin.

Q. Such as are fixed to the wall?

A. Some, and some are on stands. 3

Q. In making these sales of the various articles, do you ship your products throughout the United States?

A. We do.

Q. To other states than Wisconsin? A. Yes, sir.

Q. Do you enter into contracts with jobbers situated in other states for the shipment of such goods?

A. Well, not specifically contracts. We sell them. I don't quite understand that question.

Q. You sell them, that is all I want. A. Yes.

Q. And you ship to them? A. Yes.

Q. Have you a copy of the Petition? A. I have not. 4

Q. I hand you a copy and ask you to look at the names of the manufacturers of Sanitary Enameled Iron Ware stated on pages 1 and 2 of the Petition. Other than the names there given, what manufacturers are there of sanitary enameled iron ware in the United States?

A. There is the J. M. Kohler Sons Company of Sheboygan, Wisconsin; the Iron City Sanitary Manufacturing Company of Pittsburgh; the Blairsville Company— I may

1 not have the full titles of these companies— I believe that is called the Blairsville Enameled Ware Company of Blairsville; the Washington Iron Works of Los Angeles; then there is a small company by the name of Rundel Manufacturing Company, at Milwaukee.

Q. What lines do they manufacture?

A. They manufacture some of the articles, bathtubs, lavatories and sinks.

Q. Is that an important concern?

A. They do not, as a rule, market their product directly through the plumbing trade. It has been understood
2 that they dealt largely through Sears, Roebuck & Company, the mail order house; then there is another one which I cannot remember now.

Q. Do you know if there is one in Cincinnati?

A. The Louis Lipp Company, yes.

Q. Is that a small concern?

A. As far as the sanitary enameled ware is concerned.

Q. Do you know of the Clymer Manufacturing Company? A. Yes.

Q. Other than the names stated and those in the list to which I have directed your attention, do you know of
3 any other manufacturers of sanitary enameled iron ware in the United States? A. I do not.

Q. How long have you been in this business?

A. About twenty years.

Q. You keep advised of the conditions existing and of the manufacturers in the same lines? A. I think I do.

Q. Mr. Kohler, when did you first hear anything about a license agreement in the sanitary enameled ware trade?

A. In October, 1908.

Q. Where was that? A. At the Auditorium Hotel.

Q. In Chicago? A. Yes, sir.

4 Q. Was it a meeting?

A. It was an informal meeting of manufacturers.

Q. Of what?

A. Of enameled ware—of enameled sanitary ware.

Q. That is, there were present representatives in general from these companies named on these two pages of the Petition?

Mr. NOBLE: I object. Let the witness state who was present.

Q. Who was present? A. Mr. Clifford was present. 1

Q. Of what company?

A. The L. Wolff Company; Mr. Cline was present, of the United States Sanitary Manufacturing Company.

Q. Will you state where they are from?

A. The United States Sanitary Manufacturing Company is of Pittsburgh; Mr. Clifford of Chicago and Mr. Torrance of the Standard Sanitary Manufacturing Company were present. There were others present, but I do not remember them.

Q. Who made any suggestion respecting a license agreement? 2

A. Mr. Torrance spoke of an arrangement. It was not specifically mentioned as a license agreement.

Q. How did he describe it?

A. As an arrangement for controlling the prices through the use of the Arrott patents on a pneumatic dredger.

Q. This was when? A. In October, 1908.

Q. When was the next time that you heard a reference in the trade to a license agreement?

Mr. NOBLE: I object to the question as immaterial and as having nothing to do with the issues in this suit or the parties involved in it. 3

Mr. GROSVENOR: I will change that: Were you present at any meetings after October, 1908, at which a license agreement was discussed?

Mr. NOBLE: Note an objection to the question, as the witness has not stated that he was present at any meeting in October, 1908.

Mr. GROSVENOR: Read the question, please.

The stenographer then read the last question.

Mr. GROSVENOR: Please answer that question.

A. Yes.

Q. When? A. There was a discussion— 4

Q. State when the meeting was?

A. There was a meeting in the early part of February, I think the first, at Pittsburgh.

Q. February of what year? A. 1910.

Q. A meeting of whom? A. Manufacturers.

Q. When you use the word "manufacturers"—

A. (Interrupting): I mean manufacturers of porcelain enameled iron sanitary ware.

1 Q. This meeting was where and when?

A. On February 1, at Pittsburgh, in the Arrott Building.

Q. State who was present at that meeting.

A. I think there was a very fair percentage of manufacturers present.

Q. A meeting of the association, was it? A. Yes.

Q. Do you recall the people present?

A. Mr. Wayman was there, Mr. Cline and Mr. Hoelscher were there; the reference to the license agreement was made at an informal meeting held after the regular meeting.
2 It was not discussed openly at the regular meeting. There had been discussions regarding license agreements prior to that, in an informal manner.

Q. Did any one ask for an expression of opinion as to whether the manufacturers present were in favor of a license agreement?

Mr. NOBLE: I object to the question. Let the witness state what transpired rather than leading him by asking questions which suggest the nature of the answer which the counsel for Government desires.

3 Mr. GROSVENOR: Just read the question.

The stenographer then read the question.

THE WITNESS: Shall I answer?

Mr. GROSVENOR: Yes.

Mr. NOBLE: Note the same objection.

A. I don't believe the question was put as to who was in favor of it. There was some discussion in regard to it and some expressed their opinion.

Q. Was Mr. Torrance present at the meeting?

A. I don't remember whether he was present.

4 Q. Was Mr. Cline present?

A. Yes, I am quite sure he was, and Mr. Hoelscher was present.

Q. Mr. Kohler, you were subpœnaed to produce certain papers, were you not? A. Yes, sir.

Q. Have you produced them? A. I have.

Q. I show you a letter dated February 7, 1910, on the letterhead of Edwin L. Wayman and addressed to Walter J. Kohler, President J. M. Kohler Sons Company, and ask

you if that is a letter received by your company on or about that time from Mr. Wayman? A. It is. 1

Q. And were these schedules (indicating) attached to that letter? A. They were.

Mr. GROSVENOR: I offer this letter, consisting of two pages, with three pages of schedules attached, in evidence, without the pencil marks on the last page, as "Petitioner's Exhibit No. 141."

Letter referred to and schedules referred to were then marked and filed as "Petitioner's Exhibit No. 141." 2

BY Mr. GROSVENOR:

Q. (Reading):

"Feb. 7th, 1910.

"Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

"Dear Sir:

"Referring to the informal discussion that took place after the Regular Meeting regarding Resale Prices and Licensee Arrangement. 3

"Have you any patents that you would be willing to assign along with those owned by the other Companies, for the purpose of this Arrangement. If such is the case will you kindly send me the following information as quickly as possible."

This is a copy of the Petitioner's Exhibit No. 12 which is already in evidence. Now, did you reply to that letter?

A. Yes, sir.

Q. Did you send him a list of your patents?

A. I did not.

Q. Was there or not any meeting in March, 1910, at which you were present and at which there was a discussion of a license agreement? 4

A. A meeting at the Chicago Athletic Club among a number of manufacturers in this line.

Q. When was that?

A. In March— I don't remember the exact date, but I think the second of March.

Q. Who was present at that meeting?

1 A. Mr. Torrance of the Standard Sanitary Manufacturing Company; Mr. Herman Hoelscher of the L. Wolff Company; Mr. Cline of the United States Sanitary Manufacturing Company; Mr. McCrum of the McCrum-Howell Company; Mr. Gates of the McCrum-Howell Company; Mr. Wayman; Mr. John B. Murphy of our company and myself.

Q. Who called that meeting?

A. I think Mr. Wayman did, the latter part of February.

Q. What was the subject of discussion at that meeting?

A. Why, it was based entirely on the license agreement
2 or arrangement.

Q. Was the subject of the assignment of patents discussed? A. No, I am quite positive.

Q. Did Mr. Torrance express himself as in favor of a license agreement?

Objected to as leading.

Q. Did or not Mr. Torrance express himself in favor of a license agreement?

Mr. NOBLE: I object for the same reason.

3 A. They were practically all in favor of it except ourselves. They were all in favor of it except ourselves.

Q. Did you receive during the months of March and April correspondence from Mr. Wayman respecting this license agreement? A. I am quite sure we did.

Q. You were subpœnaed to produce those letters; have you produced them? A. I have.

Q. I show you a letter dated February 25, 1910, from E. L. Wayman to you and ask you if you received that letter? A. I did.

Mr. GROSVENOR: I offer that letter as "Petitioner's
4 Exhibit No. 142."

Mr. NOBLE: You have already identified these same letters and introduced them during Mr. Wayman's examination, and this only tends to enlarge the record.

Mr. GROSVENOR: The letter of February 7, Exhibit 12, was objected to when I introduced it.

Mr. NOBLE: I don't know about that.

Mr. GROSVENOR: I want to introduce at this time,

and I will suggest that the original which I will now present be substituted for the copies that were offered in Pittsburgh, the following letters: 1

Mr. NOBLE: I have no objection to that except any objections which I may have made to the materiality of them.

Mr. GROSVENOR: Very well.

Q. Mr. Kohler, did you receive from Mr. Wayman at any time during the latter part of 1909 a proposed draft of a proposed license agreement?

A. We did, a tentative plan.

Q. I show you a paper which you have produced under subpœna and ask you if that is the paper received? 2

A. It is.

Q. On or about what time?

A. Why, in the fall of 1909.

Mr. GROSVENOR: I offer this paper as "Petitioner's Exhibit No. 143."

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 143."

Q. I will read parts of this: "In order that there may be some legal arrangement for holding together the various manufacturers of Sanitary Enameled Ware and enable them to secure business on a continuous and profitable basis at price deferentials that will insure each a fair proportion of the business, I wish to ask if your Company would be amenable to enter into a licensed patent arrangement with the writer along the lines of the attached proposed arrangement." Did you have any discussions with Mr. Wayman after he gave you this paper? 3

A. Not any serious ones as far as we were concerned, because we did not take the matter seriously.

Mr. NOBLE: I move that the answer be stricken out as irresponsive to the question. 4

Q. Did he ask you what you thought of the license agreement?

A. They had not gotten to the stage where they were taking signatures, but he did ask our opinion about it.

Q. And what did you tell him?

A. We were opposed to it.

1 Q. This was the latter part of 1909? A. Yes.

Q. Did you receive any other proposed draft later than this one, from Mr. Wayman? A. Yes, sir.

Q. Will you look at this book which you have produced under subpœna as correspondence between Mr. Wayman and you and see if you can find it in that book?

A. I think the first was that letter spoken of of February 7. This is the next one. (Referring to Exhibit No. 141.)

Q. I show you Petitioner's Exhibits Nos. 8 and 10, being sample copies of proposed forms of license agreement and jobber's agreement, respectively, and ask you if Mr.
2 Wayman ever gave you or mailed to you any papers of that description?

A. Yes, sir; shall I go through them and see if there is any in between this letter of February 7, and the other one?

Q. No; do you recall about what time it was that you received these copies of these forms?

A. Well, during the first quarter of 1910, while this thing was in a period of development.

Q. Was your company represented at any meeting in New York City, on March 29? A. It was not.

Q. Or on March 30? A. It was not.

3 Q. Did you receive any telegrams from Mr. Wayman about that time? A. We did.

Q. A copy of a telegram of March 29, 1910, has been put in evidence as one of the Petitioner's exhibits. Will you see if you can find the original of that in this book?

A. Yes, here it is.

Mr. GROSVENOR: I offer that telegram in evidence as "Petitioner's Exhibit No. 144."

Telegram referred to was then marked and filed as "Petitioner's Exhibit No. 144."

Mr. GROSVENOR: That telegram reads as follows:
4 "Walter J. Kohler, Pres. J. M. Kohler Sons Co., City. All manufacturers except you and Weiskittel represented at meeting Weiskittel here tonight fifteen members here in person balance by letters and wire after thorough consultation with attorney Jackson of Noble, Jackson and Hubbard we are all satisfied entire proposition is absolutely legal and more feasible and easier to handle than electrical proposition which has been in force several years

sense of meeting favorable to license agreement and resale proposition 91 per cent. of production voting favorable some await consultation and consent of their associates or counsel members desire your wire answer in time for tomorrow's meeting called for ten a. m. * * * E. L. Wayman." Did you see Mr. Wayman at any time after receiving that telegram? 1

THE WITNESS: That was March 29?

Mr. GROSVENOR: This was March 29, 1910.

THE WITNESS: I did.

Q. Where? A. At our office in Chicago. 2

Q. What did he say at that time?

A. Why, he brought with him decisions of a rubber tire case, and I think of the J. I. Case Threshing Machine Company and possibly some others, to show that these plans were legal and consequently the one being considered was legal.

Q. Did he ask you to join?

A. Why, I don't remember the specific question, but his purpose there was to get us to join.

Q. Did you refuse? A. We did.

Q. I ask you to look through these papers that you have produced under subpœna and just give the names and dates of certain of them and have them marked for identification. 3

A. This (indicating) is Mr. Wayman's telegram to us of March 31; that is the time we received it.

Paper referred to was then marked as "Exhibit No. 9, for identification, offered by Petitioner."

THE WITNESS: Our answer of March 31 to Mr. Wayman (indicating).

Letter referred to was then marked as "Exhibit No. 10, for identification, offered by Petitioner." 4

THE WITNESS: Mr. Wayman's telegram of March 31 (indicating).

Telegram referred to was then marked "Exhibit No. 11, for identification, offered by Petitioner."

THE WITNESS: Our letter of March 31 to Mr. Wayman (indicating).

Letter referred to was then marked "Exhibit No. 12, for identification, offered by the Petitioner."

THE WITNESS: Our letter to Mr. Wayman of April 12 (indicating).

Letter referred to was then marked "Exhibit No. 13, for identification, offered by Petitioner."

Mr. GROSVENOR: Now I offer in evidence the letter of March 31, on the letterhead of E. L. Wayman, 1509 Arrott Building, Pittsburgh, and addressed to W. J. Kohler Company, President J. M. Kohler Sons Company, with two resolutions attached and a schedule of preferential discounts also attached, the whole exhibit consisting of four sheets, as "Petitioner's Exhibit No. 145."

Papers referred to were then marked and filed as "Petitioner's Exhibit No. 145."

Q. Were these papers attached and enclosed with this letter? A. They were.

Q. Also this sheet of preferential discounts? A. Yes.

The letter which is part of Petitioner's Exhibit No. 145, reads as follows:

EDWIN L. WAYMAN
1509 Arrott Building
Pittsburgh

W. J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis. March 31st, 1910.

"Dear Sir:—

I attach copies of the preliminary agreements, with signatures attached, that were entered into at the Special Meeting of the Manufacturers held at New York March 29th and 30th.

In accordance with the Resolution adopted for the appointment of a special Committee to conclude the matter, the following gentlemen were elected by ballot.

T. R. Barnes
A. H. Cline, Jr.
Howard T. Gates
H. M. Hoelscher
F. J. Torrance

This Committee will begin a special ten day session at Pittsburgh beginning probably the latter part of next week. Will you, therefore, kindly study over

carefully the various paragraphs in the License Agreement and Jobbers' Agreement, and if you have any suggestions or amendments to offer, kindly write me *in detail* at once or make arrangements to appear before the *Committee*. In case you decide to take up the matter in person please write me beforehand regarding such matters as you may have to offer, and I will advise you the date on which the Committee will meet with you. 1

In the absence of any reply from you, the Committee will take it for granted that the License and Jobbers Agreements as printed, copies of which you have, are satisfactory to you, together with the "differentials" allotted to your Company in accordance with the attached sheet. If the differentials allotted your Company do not meet with your approval please state fully your views and reasons. 2

Your very prompt attention to this entire matter is requested in order that the matter may be concluded within the shortest possible time.

Yours very truly,

(Signed) E. L. Wayman.

Q. I show you a letter of April 16 addressed to you and received by you from Mr. Wayman, was it? A. It was. 3

Q. Was that list of preferential discounts attached to it? A. Yes.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 146," without the pencil marks.

Q. Did you see Mr. Torrance at any time in May, 1910?

A. I did.

Q. Where? A. At our Chicago office.

Q. Was any one else present?

A. Mr. Clifford of the L. Wolff Manufacturing Company and Mr. Theodore Ahrens, president of the Standard Sanitary Manufacturing Company; Mr. Murphy of our company, and myself and a stenographer were also present. 4

Q. Was Mr. Wayman present? A. He was not.

Q. Who made the appointment for that meeting?

A. Mr. Ahrens.

Q. How did he make the appointment?

A. He wrote me a letter.

Q. I show you a letter which you produced under

1 subpœna and which is dated May 7, 1910, and addressed to Mr. Robert Kohler, of J. M. Kohler Sons Company; was that letter received by you? A. Yes, sir.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 147."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 147."

Q. Who is Mr. Ahrens?

A. He is president of the Standard Sanitary Manufacturing Company.

Q. Who is Mr. Torrance?

2 A. He is vice-president and chairman of the board of directors of the Standard Sanitary Manufacturing Company.

Mr. GROSVENOR: I will now read this letter which has been offered as Petitioner's Exhibit No. 147. (Reading):

"Pittsburgh, Pa., May 7, 1910.

"Mr. Robert Kohler,
of J. M. Kohler Sons Co.,
Sheboygan, Wisc.

"Dear Sir:—

3 "Mr. Torrance and I have just returned from New York, where yesterday at a full and representative meeting of manufacturers we have all signed up and entered into the license agreement and resale plan on enameled ware which, as you know, has been under consideration for several months.

"Every manufacturer present, after a full and free discussion of the whole plan, signed the agreement without any proviso. We hope to have the plan in force by June 1st, but all of us are already obligated to go ahead.

4 "I regret very much that you did not attend this meeting and Mr. Torrance and I would like to meet you in Chicago the latter part of next week if it is agreeable to you. We want to discuss this plan with you and see if we cannot get you to reconsider and join in with the rest of us. The Iron City Concern and yourselves are the only people of importance who have not signed. We think you ought to give this plan a fair trial.

"During the last three months I have traveled extensively all over the United States and have interviewed a great many of the jobbers on this resale proposition. The jobbers are almost a unit in favor of it. The Niagara Falls meeting passed a resolution unanimously approving it. The local associations in a number of cities have demanded that we put such a resale plan in effect. It is not possible to carry through a resale price without a strong organization among the manufacturers and without some manner of controlling prices. The license agreement we have entered into with Mr. Wayman offers a legitimate and lawful way of doing this. We have submitted the plan to our attorney and he have advised us that it is allright.

"I also had a thorough explanation from Mr. Jackson and so far as I can see, there are no legal difficulties in the way.

"Let me explain again, please, that so far as the Standard Sanitary Manufacturing Company is concerned, we would have preferred to conduct our business independently and without such an arrangement as we are now in. We earned over $1,000,000.00 net last year and feel that we can take care of ourselves under any and all conditions.

"There are two reasons why we went into this agreement:

"First because our customers all over the United States have demanded it.

"Next owing to the great amount of trouble which the jobber has had with enameled iron ware and the small margin of profit on which he was compelled to sell it, there is a growing disposition on the part of the jobber to handle and push other lines which he can substitute for enameled iron and on which he claims to make a better profit. The resale plan offers the jobber a fair profit and will remove the incentive to push other goods.

"The plan under which we propose to operate is far reaching and leaves no middle ground to stand on. I can assure you that everybody is most anxious to have you with us as we need both your advice and counsel and your support.

1 "Please wire me Monday in care of this office and let me know whether you will meet us and if so, on what day. Friday would suit Mr. Torrance best.

"Yours very truly,

Theo. Ahrens

"TA" President."

Q. It was pursuant to that letter that that conference was had to which you referred? A. It was.

Q. What was the date of that conference?

A. Friday, May 13.

Q. At your Chicago office?

2 A. At our Chicago office.

Q. What was said, if anything, about the license agreement by Mr. Ahrens on that day?

A. Mr. Ahrens did most of the talking in explaining the plan and stating the necessity for it; he emphasized that the jobbers requested it.

Q. What did you say?

A. I put the question to them—I put the question to them, "You will admit that this equipment covered by the Arrott patent is not necessary in the manufacture of enameled ware," to which they practically assented. I then said, 3 "Then, its purpose is purely for the purpose of entering into an arbitrary price agreement?" Mr. Torrance said, "If you put it that way." I then said, "The patent in that case is purely a subterfuge and this plan would be contrary to the laws of Wisconsin, which are very strict on that, and also the Sherman Anti-Trust Law, and we will not go in it. Mr. Clifford was impressed with the word "subterfuge." He said that was a very good word. He also made the statement that the Government could do nothing more than break up the show.

Q. How long was that meeting?

4 A. Oh, it lasted probably from an hour to two hours.

Q. I show you a letter on the letterhead of the Standard Sanitary Manufacturing Company addressed to J. B. Murphy, vice-president J. M. Kohler Sons Company, First National Bank Building, Chicago, Illinois, and ask you if your company received that letter, that is, Mr. Murphy?

A. It did, at the Chicago office.

Mr. GROSVENOR: I offer that as "Petitioner's Exhibit No. 148."

Paper referred to was marked and filed as "Petitioner's Exhibit No. 148." 1

Q. I ask you if you received this letter of May 19 from the Standard Sanitary Manufacturing Company to your company and signed by Mr. Ahrens as president?

A. We did.

Mr. GROSVENOR: I offer this letter of May 19, addressed to Mr. Walter Kohler, from the Standard Sanitary Manufacturing Company, as "Petitioner's Exhibit No. 150."

Letter referred to was marked and filed as "Petitioner's Exhibit No. 150." 2

Q. And were these two sheets (indicating) enclosed?

A. No, sir; I think that is Mr. Murphy's answer to that letter. That letter was sent to Mr. Murphy but not signed, but Mr. Ahrens' initials are there, his stenographic initials "T. A."

Mr. NOBLE: I object to the admission of this letter; it is not sufficiently identified.

Mr. GROSVENOR: I will offer it now and have it identified more sufficiently later. I offer the letter as "Petitioner's Exhibit No. 149." 3

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 149," and was, at request of counsel, attached to letter dated May 18, from the Standard Sanitary Manufacturing Company to Mr. J. B. Murphy, which is known as "Petitioner's Exhibit No. 154."

Mr. GROSVENOR: To which of these three letters does counsel object?

Mr. NOBLE: I object to "Petitioner's Exhibit No. 148," which was stated by the witness to be a letter from Mr. Ahrens which is not signed. 4

THE WITNESS: It is only signed with the letters "T. A."

Examination Suspended.

JOHN B. MURPHY, a witness of competent age, produced on behalf of the petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Murphy, what is your position?

A. Vice-president of the J. M. Kohler Sons Company.

Q. I show you this letter which the Government has introduced as Petitioner's Exhibit No. 148, and ask you if that is a letter received by you in the course of the mail?

A. Yes, sir.

Q. I show you this letter of two yellow sheets which has been introduced as Petitioner's Exhibit No. 149, and ask you if that is your reply to Petitioner's Exhibit No. 148? A. Yes, sir.

Examination Suspended.

WALTER J. KOHLER, resumed the stand for continuation of direct examination, and testified as follows.

DIRECT EXAMINATION (continued):

Mr. GROSVENOR: I will now read Petitioner's Exhibit No. 148. (Reading):

"Pittsburgh, Pa., May 18, 1910.

"Mr. J. B. Murphy, Vice Prest.,
J. M. Kohler Sons Co.,
First National Bank Bldg.,
Chicago, Ills.

"Dear Sir:—

"In discussing with you the proposed license and resale arrangement during my recent visit to Chicago, I tried to make it plain to you that the principal reason; in fact, the one which really decided us to advocate this plan was the unanimous demand made by the jobbers of the United States for some such plan and by which they could obtain a better profit on the sale of our product than they now enjoyed.

"You seemed to doubt this assertion, which was repeatedly made by me and I regret to say that you seemed to think that we were not sincere or acting in good faith in the whole movement. I am sending you therefore, a few of the letters which I wrote to my partners during my recent trip West and which will indicate how we felt about this subject.

"Please note in my letter of March 9th the statement: 'I understand that this resale proposition is

being agitated to a considerable extent and it may be 1
that it will force us to do some things which we would rather not do.'

"Again on March 21st in my letter to Mr. Torrance, I say: 'It is evident from what you write me that we cannot afford to take a position in this matter which would be directly opposed to our customers' wishes and I am glad to know that we are working in harmony with the other manufacturers along this line.'

"Again on March 25th from Los Angeles, note the sentence on the second page: 'It may be that our 2
customers will force us to go into such a deal.'

"Again on April 9th from Seattle: 'It is such a radical departure from what we have been doing for the last ten years that I am very unwilling to agree to it but on the other hand, if we do not do so, we will be blamed by our customers and it may hurt us.'

"Please note also copy of Mr. Myler's letter of February 2nd addressed to me.

"These letters should convince you that for the past four months we have been debating and discussing this subject among ourselves and that the 3
reason which finally decided us to favor this plan was that we believed it was to our customers' interests to put it through and that we thought that the interest of our customers demanded it. I want to therefore again deny your assertion that I am a philanthropist. I am not but I am interested in the welfare of the people to whom we sell our goods and I believe that it is only good business policy on our part to help them make a profit if we can consistently do so.

"Please return the letters after you have read 4
them.

"Yours very truly,

"TA" President."

By Mr. Grosvenor:

Q. Did Mr. Murphy send the letters therein referred to to you?

A. That is Mr. Ahrens' letter; Mr. Murphy returned them direct.

1 Q. You did not see them, then?
A. I don't remember whether I saw them or not; possibly.

Mr. GROSVENOR: I will now read Petitioner's Exhibit No. 149 (Reading):

"May 20th, 1910.

"Mr. Theo. Ahrens, Pres.,
Standard Sanitary Mfg. Co.,
Pittsburgh, Pa.

2 "Dear Sir:—

"Acknowledging yours of the 18th, the question of selling our goods lower than the Standard was brought up by you at the La Salle in the presence of Mr. Hoelscher, and you stated this was on the regular two-year guaranteed tub and the price was $11.00, which I did admit. I did say, however, that since I had been engaged in this business for about two and one-half years, you had been the main factor in reducing prices the greater portion of that time.

"It is possible that recently, in a few cases, we did
3 quote and sell lower than your prices, but only in spots, and nothing of any consequence.

"I did not state to you that Mr. Myler's check was sent to equal the $11.00 price on the tub, however. In this case you misunderstood me, but that his check was generally sent to equalize prices.

"After this interview at the La Salle Hotel, I took up the question with Mr. Kohler, and read to you Monday evening before you left, giving you the exact prices that we made in a few special cases only.

"So far as the Eastern market is concerned, one of
4 the principal manufacturers and a very reputable one who does quite a business in the East, stated that there was no bottom to New York prices.

"I wish to say that any reductions that we have made have not been wholesale, horizontal reductions the same as your company have made, and are not so damaging to the manufacturer or the trade generally, for that reason.

"We note that in the Eastern market you have

not given a special rebate beyond the regular printed carload prices to *all the trade*. We do not know that we said to you that in any special market you did this. 1

"As to the man who you say lies, is it not possible that there is a mistake *somewhere?* We know of no price agreement, and you accused us of selling below your prices, which, in a few cases, we did admit. We believe it is our privilege to do so, owing to your operations in this direction for a very long period.

"We omitted to state that in the conversation with Mr. Torrance at the Hotel La Salle, we were accused also of selling our goods in the East on the same basis as many of the inferior class of manufacturers, and from the prices we gave you, and the prices you now accuse us of making, you must admit that you are very badly mistaken. 2

"Yours very truly,
"J. M. Kohler Sons Co.,
"Vice Prest."

Mr. GROSVENOR: Now I will read Petitioner's Exhibit No. 150. (Reading):

"Pittsburgh, Pa., May 19, 1910. 3

"Mr. Walter Kohler, Prest.,
J. M. Kohler Sons Co.,
Sheboygan, Wisc.

"Dear Sir:—

"Since my return to Pittsburgh our Executive Committee has again gone carefully over the proposed license and resale arrangement and we have decided to go ahead with it and put it through and into effect June 1st. 4

"We write to advise you of this fact and can only express the hope that you will reconsider your determination not to become a party to this agreement and will join with us in this movement which, if successful, is bound to benefit our customers greatly as it will insure a fair profit on a line of goods which at this time is fiercely competitive and on which the profit has been altogether out of proportion to the

1 trouble, annoyance and expense of handling the line.

"Yours very truly,

"TA
enc

Theo. Ahrens,
President."

Q. The pencil notations in this letter were made in your office?

A. They were made by me. I forwarded that letter to Mr. Murphy.

Q. Was that letter answered?

2 A. Yes, it was answered.

Q. I show you this letter which you have produced at my request and ask you if that is a copy of your reply to Petitioner's Exhibit No. 150? A. It is.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 151."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 151."

Mr. GROSVENOR: That letter reads as follows:

"May 21st, '10.

"Mr. Theodore Ahrens, Pres.,
3 Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"Dear Sir:—

"Acknowledging your letter of May 19th with enclosed copy of your letter of May 18th to Mr. Murphy at Chicago. We note your decision to proceed with the license agreement and resale arrangement as planned out and are not surprised, as we did not believe that our staying out would affect your determination if you felt that it was best for yourselves
4 and your customers. As you know, we have not been favorable to a *license agreement* at any stage of the proceedings but we gave the subject very serious consideration before coming to the definite decision not to become parties thereto, and our position has not changed since meeting you at Chicago May 13th. The resale arrangement may be of benefit to the jobber and we do not object to this plan in the least.

"Your letter to Mr. Murphy will, no doubt, be answered by him. 1

"Very truly yours,

"J. M. Kohler Sons Co.,

per —

"WJK-W" Pres."

Q. Did you receive a reply to that letter?

A. I did not—I am quite sure I did not.

Q. Mr. Kohler, I show you what is part of Exhibit 30 of the Government, being a printed book, and ask you if that contains the names of the principal jobbers in that line in the United States? A. It does. 2

Q. By that, I mean the principal jobbers of sanitary enameled iron ware?

A. Yes, that is right; I would like to add to that that the wholesale hardware dealers also handle the common kitchen sinks with the backs.

Q. All the principal jobbers of bathtubs would be in that book, wouldn't they? A. Yes.

Q. And of lavatories?

A. Yes, sir; practically all; there may be one or two out, but that would be all.

Q. How long has your company been in business, Mr. 3 Kohler? A. Since 1873.

Q. Who founded it? A. My father.

Q. And did you succeed him in the presidency?

A. I succeeded my brother in the presidency, Robert Kohler.

Q. When did you begin to manufacture sanitary enameled iron ware?

A. We manufactured sinks in the 80's, we started about '84 or '85.

Q. You mean porcelain enameled sinks? A. Yes, sir.

Q. When did you start to manufacture lavatories or 4 washbowls? A. In the early 90's.

Q. And bathtubs? A. In the early 90's.

Q. Was your company one of the earliest to enter into this line of manufacturing? A. It was.

Q. What other companies were engaged in that line of manufacture which are now doing business?

THE WITNESS: Do you want the constituent companies of the Standard Sanitary Manufacturing Company, which are still today a part—

Mr. GROSVENOR: Yes, I want the names of the early manufacturers.

A. The L. Wolff Manufacturing Company of Chicago; the J. L. Mott Company—

Q. When did Wolff start, about what time?

A. I don't know when they started to make enameled ware, but I presume the later 80's or the early 90's; the Jordan L. Mott Company of New York, who had business prior to 1880; the constituent companies of the Standard Sanitary Manufacturing Company, which was then the Standard Manufacturing Company, and Dawes and Myler and Ahrens, in that class did not start to make enameled sanitary goods until about '95.

Q. How about the Cahill Iron Works?

A. Not until after 1900. Do you want my knowledge of the history of all of them?

Mr. GROSVENOR: Yes.

A. (Continuing): The United States Sanitary Manufacturing Company of Pittsburgh started after 1900; they were formerly affiliated with the Standard Manufacturing Company, and the Standard Sanitary Manufacturing Company, after 1899—after the merger—and they formed an independent company after 1900. The Iron City Manufacturing Company, to my knowledge, went into the business after 1900; the Blairsville, McVay & Walker, possibly in the late 90's, and the Washington Iron Works within the last two or three years. The Rundel Manufacturing Company of Milwaukee, about 1900; the National Manufacturing Company of Salem, Ohio, within the last two or three years.

Q. How about Weiskittel?

A. Weiskittel is an old company; I think they manufactured in the late 90's—they had been in the manufacture of stoves long before that.

Q. But you are discussing now only as to sanitary enameled iron ware? A. Yes, sir.

Q. Now, how about the Wheeling Enameled Ware Company?

A. After 1900; I think they went into the hands of receivers and reorganized; the Union Sanitary of Noblesville, Indiana, was formed about 1902—that is, they formed then under the name of McElway & Richards, and they went in receivers' hands.

Q. And the Colwell Lead Company? A. Since 1900. 1

Q. And the Barnes Manufacturing Company?

A. Since 1900; the Humphryes Manufacturing Company also. This is purely my impression of it.

Q. You have devoted your life to this business?

A. My business life; yes, sir.

Q. Of these companies which you have named, which are the large companies?

A. The Standard Sanitary Manufacturing Company, which is a consolidation; the L. Wolff Company; the United States Sanitary Manufacturing Company; the Iron City is also a very important factor in the business, and the J. M. 2 Kohler Sons Company.

Q. Your company is one of the largest? A. Yes, sir.

Q. Now, I want to get some description on the record as to how the ordinary porcelain enameled iron bathtub is made.

THE WITNESS: Do you mean the porcelain enameling—

Q. Supposing you go back to 1890—was the bathtub made the same then as it is to-day?

A. Practically, but a little economy has been worked in.

Q. Will you describe the method? 3

Mr. NOBLE: May I ask if Mr. Kohler means to qualify as an expert on the enameling process?

Mr. GROSVENOR: Mr. Kohler has stated that he manufactures this line of goods and I want a description on the record of how porcelain enameled bathtubs are made.

Mr. NOBLE: I have no objection, but Mr. Kohler is the head of the concern, and all I want to know is whether he will answer from a commercial point of view or from the manufacturing point of view. 4

Q. Mr. Kohler, you are president of the company?

A. I am.

Q. Do you watch the manufacturing in the factory at any time? A. Yes, sir.

Q. You oversee the work?

A. I have very close touch with it. I did oversee it for a number of years. I am not an expert, though.

Q. But you have worked in the factory? A. Yes.

1 Q. And you know the process?

A. Yes, I know the process very well.

Q. Now, will you describe the method in which an ordinary porcelain enameled bathtub is made. What is the chief material, first? What is the foundation of the tub?

A. Cast iron.

Q. After the tub is cast, describe the process from that point?

A. It is cleaned and finished preparatory to applying the enamel. The process of enameling consists of an intermediate coat known as a ground or slush coat which is
2 fired in. It is applied on the casting and then fired; then the porcelain enamel is applied on this preliminary or first coat.

Q. By porcelain enamel you mean the dust?

A. The dust, which is the porcelain enamel, composed of several ingredients, the forms of which are not generally made public and do not necessarily enter into this examination. I am speaking of the process as being practically general in use in the last 15 years. Prior to that time some tubs had been made by the wet process, so in this examination I will speak only of the so-called dry process, the ap-
3 plying of the porcelain enamel in the powder form.

Q. Which has been used for past fifteen years?

A. Longer than that by some manufacturers.

Q. How long has your company used that form?

A. About fifteen or sixteen years. The bathtub or article after being heated in the furnace is withdrawn and the porcelain enamel is sifted thereon. When a sufficient amount has been applied, the article is returned to the furnace for the further fusing of the material on the casting, and depending upon the grade of the article, it is withdrawn several times and the operation repeated. The usual method in effect had been to apply this enamel through a
4 sieve attached to the end of a long handle which was operated or vibrated by an iron instrument or handle in the hands of the operator. Do you want me to continue and describe the Arrott patent?

Mr. GROSVENOR: Yes.

A. (Continuing): The Arrott patent consists of an air hammer—it governs the vibrating of this sieve by mechanical means instead of by the hands of the operator.

Q. The Arrott patent is known as an automatic dredger? 1

A. Their claims are that it is a mechanically operated dredger; the patent was applied for in 1899 and granted in the same year.

Q. When did your company first use the automatic dredger?

A. Our company used the automatic dredger four years prior to the granting of this patent.

Q. Have you finished the description of the way porcelain enamel is made?

A. I did not finish the description of the Arrott patent, if that is essential.

Q. We can go into that later. After the porcelain dust is scattered over the tub, then the tub is taken back to the furnace? A. Yes, and the— 2

Q. The highest grade is the five year guaranteed tub?

A. So-called by the Standard Sanitary Manufacturing Company. Our tubs are not guaranteed; we place our label on them and say that our name is a guarantee that the tub is first class. We do not use a time guarantee. That has never been taken very seriously by us.

Q. As I understand the pneumatic dredger which holds the porcelain dust— 3

A. The sieve holds the powder; the dredger is attached to the sieve.

Q. Before the invention of the automatic dredger or Arrott patent the dust was held in a sieve on a long handle and the workman, by hitting the handle spread the powder on the tub? A. Yes.

Q. By the enameling process, then, you mean the spreading of the powder on the tub when the latter is hot?

A. That is as applied by the dry process; the wet process is different.

Q. Is the wet process used today? 4

A. Not on bathtubs; it is used on kitchen ware.

Q. The automatic process has something which, either by electricity or compressed air, is an arrangement attached to the handle, and by pressing a button the sieve is struck rapidly and the powder comes through just the same as before? A. Yes, but the blows are more rapid.

Q. The difference between the two lies only in the application of the power which hits the dredge so as to make the powder come out? A. Yes, sir.

Mr. NOBLE: I object to that; he has not qualified as a patent expert. If he just wishes to explain what is done I have no objection, but I do object to that question and answer.

Q. You have hand dredgers and automatic dredgers in your factory?

A. I think you are asking me a question which I ought not to answer. Our company is not on trial here.

Q. Don't answer if you do not want to. I am just trying to get some details of the business. Take the small articles like the lavatory; is the enameling powder applied to the lavatory in the same way as it is to the bathtubs?

A. The process is identical. I understand that some manufacturers use the pneumatic dredgers on lavatories and some do not. They use it on different portions of the bathtubs, and they use the hand process on the other.

By Mr. NOBLE:

Q. By courtesy of counsel for the Government I would like to ask you whether you are now speaking from general information or from observation in factories which you have visited?

A. Well, it is largely from general information; I have visited some factories where the process is used.

Mr. NOBLE: Then I object to any testimony except what Mr. Kohler has referred to as having seen, and knowing of his own personal knowledge, and I ask that the answer just given be stricken out.

By Mr. GROSVENOR:

Q. That is to say the powder is sifted on the lavatory when it is red hot? A. Yes, sir.

Q. And that putting on of the powder applies in the case of all these articles manufactured by the sanitary enameled iron ware manufacturers?

A. Practically, to my knowledge.

Q. Of these manufacturers of sanitary enameled iron ware, do most of them produce a complete line of goods?

A. The larger companies do.

Q. All those you have named today as being the larger companies? A. Yes, they practically do.

Q. And there are certain standards which are adopted in the trade? A. Yes, sizes. 1

Mr. GROSVENOR: That is all.

Examination Suspended.

At this point a recess was taken for one hour, the hearing to resume at two o'clock p. m.

After Recess.

WALTER J. KOHLER, a witness heretofore produced and sworn, resumed the stand for cross examination, and testified as follows. 2

CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Kohler, in reply to Mr. Grosvenor's question you named all the manufacturers of sanitary enameled iron ware or porcelain enameled iron ware, whichever you call it, this morning; do you think so? A. Practically, yes.

Q. Have you thought of any others since then?

A. I haven't given it any thought since then.

Q. I understood you to say that several years ago at an informal conference in the Auditorium Hotel something was said about a license plan or license agreement?

A. I didn't use that word, I said for an arrangement; the talk was regarding an arrangement for maintaining the price through the use of the Arrott patent. 3

Q. Was that the meeting of the Supply Association?

A. It was at that time. It was an informal meeting held by a number of the manufacturers.

Q. What was the meeting of that association?

A. I suppose the Enameled Ware Association.

Q. Wasn't it the Central Supply Association?

A. Not at this informal meeting of the manufacturers. The jobbers had nothing to do with it. The meeting was of the Central Supply Association, and an impromptu meeting was called of the manufacturers who were in attendance at the other meeting. 4

Q. I only want to fix a date by that, that is all. A. Yes.

Q. The informal conference you are talking about occurred after a meeting of the Central Plumbers' Supply Association? A. Yes.

Q. Do you recall Mr. Day of the Day-Ward Company being there?

1 A. It is very possible; he was still alive at that time.

Q. You do not remember him being there, though?

A. No.

Q. Do you remember Mr. Wayman being there that day?

A. I don't think so; no, sir; he may have; I don't remember it.

Q. Do you remember that after meeting or after that day a committee went down to Trenton to see how the Pottery Selling Company conducted its business?

THE WITNESS: Do I remember that?

Mr. NOBLE: Do you recall anything about that?

2 A. No.

Q. Do you remember Mr. Barnes being at the Auditorium Hotel that day?

A. It is possible, but I do not remember specifically; Mr. Barnes is in the habit of attending those meetings.

Q. Do you remember a discussion at or about that time of getting up a selling company to sell goods of the enameled ware manufacturers?

A. I cannot say that I do; it was not brought up specifically to us. It may have been discussed, I don't know, but not in my hearing, to my knowledge.

3 Q. The meeting, as you recall it, was in the winter of 1907 and 8?

A. No, it was in the fall, October, 1908—October of that year.

Q. How do you fix that date, Mr. Kohler?

A. Well, I remember it specifically; it was the first year Mr. Murphy was with us. I remember discussing the matter with him for a while.

Q. When did he come with you?

A. The beginning of 1908.

Q. And you remember that it was some time after he
4 came to you that you talked to him about it?

A. It was at that fall meeting in Chicago.

Q. If other gentlemen who were there tell you that you are mistaken about its being in the fall, and say that it was in the spring, would that refresh your recollection? A. Not as to this particular incident, no.

Q. I show you Exhibit 141 consisting of four pages and call your attention to the last page and ask you if

you know in whose handwriting those pencil marks are on there? A. I wrote that. 1

Q. Why did you put it there?

A. Just as a matter of curiosity to see how these things would be worked out.

Q. You were considering, then—

A. Our position up to that time had been consistent that we would not do it.

Q. And you put that down there to see how it would work out if you changed your mind?

A. I cannot say that; I put them there to see what would be the outcome of it. 2

Q. You put that down there to see how the matter would work out if you should change your mind?

Mr. GROSVENOR: I think I offered that exhibit without the pencil marks.

THE WITNESS: Let me see it.

Paper referred to was then shown to the witness.

THE WITNESS: What is the date of it?

Mr. NOBLE: That is dated February 7.

A. Well, if it was worked out this is possibly how it would have worked out or developed.

Q. The way it would apply to your company, you mean? 3

A. Yes.

Q. And you wrote those memoranda in yourself at that time? A. Yes.

Mr. NOBLE: I offer in evidence the pencil notations on the fifth page of Exhibit No. 141, concerning which I have just interrogated Mr. Kohler.

Pencil notations found on the fifth page of Petitioner's Exhibit No. 141 were then marked and filed as "Defendants' Exhibit No. 1."

By Mr. NOBLE: 4

Q. The pencil notations to which I called your attention read as follows, do they not? After paragraph 2, which reads: "Schedules of Ware under License" are written the words "Entire Line."

A. Yes, I put every answer that is down there.

Q. Then after the third paragraph, which reads "Amount of Royalty," you have written "proportioned as at present;" what does that mean?

A. That, as I remember, means that we were all members of the manufacturers' association and contributed proportionately to the expense; that don't mean that each company paid the same amount toward the expense, but it meant that each company paid an amount in proportion to its estimated production; we had no part in placing that proportion. It was submitted to us and we stated that it was satisfactory and would contribute accordingly.

Q. After paragraph 4 which reads: "Amount of Forfeit," you have, "proportioned to size;" what does that mean? A. The size of production.

Q. And has reference to the size—

A. This was never utilized; it was just a memorandum made on a list that had been sent to us and we never made use of it and some of its significance might not be definite.

Q. What did you mean by the words "proportioned to size"?

A. I don't remember, but I presume in proportion to the size of the company.

Q. Compared to the other companies? A. Yes.

Q. After paragraph 5, which reads "prices to be established by," you have written "Executive Committee;" what did you mean there? A. I don't remember.

Q. Paragraph 6 reads: "Resale Price List—Discounts to Jobbers," and you have written "15% over cost;" what did you mean by that? A. I don't remember.

Q. Paragraph 7 reading "Rebates to Jobbers for maintaining Resale Prices," you have written after that "10%;" what did you mean by that 10 per cent?

A. We had a preliminary agreement sent us by Mr. Wayman and this is possibly based on that. Our correspondence will show that we had up to that time not even considered the matter seriously or intended to go into it.

Q. Paragraph 8, reading, "Length of Rebate Periods;" you have written after that, "not less than 3 months;" what did you mean there?

A. I don't know, but I suppose it refers to the preliminary agreement submitted by Mr. Wayman.

Q. Wouldn't it mean that the rebates which you were to pay jobbers should be paid at periods of not less than three months if they retained your resale price?

A. I don't remember that.

Q. In between paragraphs 8 and 9 appear the words

"Price on which rebate applies;" what does that refer to? 1

A. I don't remember. It is not worked out specifically. Is not that put into the shape of a question?

Q. No, there is no question mark after any of them.

A. Some of them were intended so.

Q. I am only asking what you meant by these various answers? A. I don't remember.

Q. Now, paragraph 9 reads: "Agreements to become effective and no Future Delivery Orders to be recognized beyond that date;" and you have written, "Quarterly;" what does that mean?

A. I don't remember just what that meant. 2

Q. Paragraph 10 has nothing written after it, but paragraph 11 reads: "Differentials between Manufacturers," and you have written, "not more than 2½%;" what does that mean?

A. That question had been discussed that the differentials be allowed smaller manufacturers.

Q. After paragraph 12 you have written these words: "Can penalties be enforced." What did you mean by that?

A. I presume if the rebate royalty was withheld whether that could be enforced.

Q. Then you have written the words, "Central Selling Co.;" what does that mean? 3

A. I don't remember specifically what that means unless it was one large selling organization.

Q. You mean one large selling organization to sell the products of other companies including yours, if you decided to go in?

A. I don't say if we decided to go in, but if that was the plan.

Q. You have written the word "Policing;" what did that mean?

A. Mr. Torrance had used that at one of the meetings.

Q. Well, what did you write it for? 4

A. Just as a memorandum; he had meant keeping a tab on the members, as I interpreted it, to see that the different agreements were lived up to.

Q. Now, you have the words, "Direct shipments (blank) % extra," what does that mean?

A. There is a differential, or there used to be a difference between the shipments to customers—in other words, if it was to his own stock there was a charge made.

1 Q. Then you have the words "Territories divided;" what did you mean when you wrote those words?

A. I think Mr. Wayman had submitted to me at one time a plan of the Potteries Selling Company dividing the country into different territories and discounts, and this whole sheet was probably based on the information he had at that time.

Q. Do you recall whether Mr. Wayman submitted that data concerning the Pottery Selling Company shortly after Mr. Wayman, Mr. Day and Mr. Barnes had been to Trenton to see how that company did its work?

2 A. I cannot say. I don't think Mr. Wayman sent me this; I think he showed it to me once.

Q. I don't think I used the word "sent;" I meant did he give it to you or show it to you? In other words, did he tell you about the plan of the Pottery Selling Company as you recall it? A. Yes.

Q. You said you received the other proposed draft of a license agreement, that is, other than the one shown in the letter of February 7th which has been marked as Petitioner's Exhibit No. 141?

THE WITNESS: An earlier one?

3 MR. NOBLE: Yes, an earlier one.

A. I don't remember the exact answer that I made; there were earlier and later drafts.

Q. Have you got those?

A. I think so; I think they are in there. There was one submitted as an earlier one.

Q. What have you done with those?

A. They were brought here under subpœna.

Q. Have you turned them over to counsel for the Government? A. The Government has them.

Q. In Petitioner's Exhibit 144, which is a telegram 4 sent to you on March 29, 1910, by Mr. Wayman from New York, he says: "Entire proposition is absolutely legal and more feasible and easier to handle than electrical proposition;" do you recall what he referred to there by the "electrical proposition?"

THE WITNESS: What is the date of that telegram?

MR. NOBLE: March 29, 1910.

A. Why, I assume that it was the electric lamp proposition. I understand there is a resale price on that. 1

Q. Had Mr. Wayman ever talked to you about that proposition? A. I can't say he had specifically.

Q. Well, unspecifically had he?

A. He may have given it as an illustration. He refers to it there.

Q. You knew about the fact that there was a licensed agreement in respect to electrical lamps, according to your answer? A. I have heard there was.

Q. Do you recall whether Mr. Wayman ever talked to you about that? 2

A. Mr. Wayman, according to my recollection, did tell me once that he had been identified with one of the electrical companies as their representative in the West; whether I got the information that the resale agreement existed for that from him or not, I cannot say. It is just one of these things which you absorb at times. I know of the Selden patent in the automobile business, but I don't know where I first heard of it.

Q. I believe you said you had a talk with Mr. Wayman later in your Chicago office? A. Yes, sir.

Q. At which time he told you about the rubber tire case, the J. I. Case Threshing Machine Company case, and other cases, am I correct? A. That is my impression of it. 3

Q. At the close of that talk did you tell Mr. Wayman that you would take the matter under consideration?

A. I don't remember that we did specifically state that, or that I did.

Q. Did you say anything like that—I don't know if I have the words exactly right or not?

A. It is possible that I may have said that we would give it further consideration.

Q. Did you say anything about taking it up with your attorneys? 4

A. We may have said that we would consult with our attorneys further; we did not give him any encouragement—

Q. Your answer, as I understand you, was that you may have said that you would take it up with your attorneys further?

A. We may have said that, because he brought additional testimony according to his mind which would have a bearing

on the case, and I may have said, "We will submit this to our attorneys."

Q. You have testified, in response to counsel for Government's question about a meeting that took place on Friday, May 13. I understood you to say that Mr. Clifford, Mr. Ahrens, Mr. Murphy, you and a stenographer were present?

A. Yes, sir.

Q. Did the stenographer take notes of what was said?

A. I didn't tell her to, and I haven't asked her whether she has.

Q. In a letter of May 7, 1910, which is Government's Exhibit No. 147, and which is addressed to Mr. Robert Kohler, from Mr. Ahrens— A. Yes.

Q. I presume Mr. Robert Kohler was your brother?

A. Yes.

Q. And that letter was received by you? A. Yes.

Q. In that letter he says: "The Iron City concern and yours are the only people of importance who have not signed"; how important a manufacturing concern in the enameled ware business is the Iron City Manufacturing Company?

A. I think it is quite an important one. It is one of the large companies.

Q. Is it as important in the trade as your company?

A. That depends upon the point of view.

Q. I would like your view.

A. It is a very important factor in the industry.

Q. Do you know whether it is as large, or whether it does as much or more business than you do?

A. I never inquired into that.

Q. Well, compare it with the United States Sanitary Manufacturing Company; is it as important as that company? A. I don't know; I should assume so.

Q. And the J. L. Mott Company, how about that?

A. I don't know; the Mott Company is a very large and important company.

Q. Would you consider it as important as they are, in sanitary enameled ware?

A. I think it is important; it is one of the leading companies in the industry.

Q. Now, the J. M. Kohler Sons Company—is that an important manufacturing company in the enameled iron ware business?

A. That depends on the point of view. 1

Q. I would like to have your point of view, Mr. Kohler.

A. We aim to make it an important factor in the business.

Q. Is it not a fact that the Standard, the L. Wolff, the United States Sanitary, the Iron City and the J. M. Kohler Sons Company are the largest manufacturers of sanitary enameled iron ware in the country?

A. I practically made that statement this morning, I think, in referring to the largest manufacturers.

Q. Where do you sell your product?

A. All over the United States. 2

Q. Your business is a thriving one, isn't it?

A. Satisfactory to us.

Q. I am not directing my questions toward prying into your private affairs; I am just inquiring about the general trade, that is all. Do you sell your ware direct to the plumber or through the jobbers?

A. We sell our output through the jobbers. We do not sell the retailer except in our own town where it is a matter of local pride and a convenience. The plumbers there come out to the factory and get the stuff, but our policy is to market through the jobbers. 3

Q. Do you sell any jobbers not in the blue book which Mr. Grosvenor showed you this morning and which is part of Petitioner's Exhibit 30?

A. I would have to go through our sales account and through the blue book and compare them.

Q. What is your opinion of the matter generally?

A. Our sales cover practically all the leading jobbers in the country.

Q. So you would expect to find your sales made mostly to the men whose names appear there?

A. Yes, those on the blue book. 4

Q. In Mr. Ahrens' letter, which is Petitioner's Exhibit No. 147, he says: "Next, owing to the great amount of trouble which the jobber has had with enameled iron ware and the small margin of profit on which he was compelled to sell it, there is a growing disposition on the part of the jobber to handle and push other lines which he can substitute for enameled iron." What other lines are referred to there?

A. Mr. Ahrens wrote the letter and he can tell you that.

Q. Well, what did you understand him to mean?

A. I supposed he referred to the vitreous ware.

Q. That is the solid procelain ware?

A. No, that is far higher in cost.

Q. Tell us what you understood these words to mean when you say vitreous ware?

A. There is a grade of lavatories made in what is known as vitreous ware, which some people claim is getting to affect the sale of enameled iron ware.

Q. That is made out of burnt clay, is it not?

A. You will have to ask the potters, because that is a trade affair.

Q. What do you understand it is made of?

A. I don't pretend to know. I don't understand just where the difference is between the porcelain and the vitreous.

Q. This vitreous ware to which you referred is in competition with sanitary enameled iron ware, as I understand it?

A. I think it is, from what I have heard of it, that is, from rumors. We have not found that it was in competition with our ware, but I think it is principally in the lavatories.

Q. But as to lavatories you understand that it does come into competition with your ware?

A. I have heard that statement made.

Q. I call your attention to Petitioner's Exhibit 149, which is a letter dated May 20, 1910, from Mr. Murphy to Mr. Ahrens? A. Yes, sir.

Q. He says there in respect to the prices at which you and the Standard Sanitary Company have been selling your goods, "it is possible that recently, in a few cases, we did quote and sell lower than your prices, but only in spots, and nothing of any consequence." Is that true?

THE WITNESS: Do you mean did we do it, or is Mr. Murphy's statement true?

Mr. NOBLE: Is that statement true?

A. Mr. Murphy is a truthful man.

Q. Is that statement true?

A. It is possible that we may have sold lower than them at times and they sold lower than us at times. 1

Q. I ask you is Mr. Murphy's statement true as here made? A. I assume that it is.

Q. You said to Mr. Grosvenor that the enameling powder was composed of several ingredients generally not made public? A. Yes, sir.

Q. I do not wish to inquire as to the proportion, but I want to know if you will tell me, what the ingredients of that powder are?

A. I don't think I should. There is a difference in the ingredients used at the different plants, and I don't think that I should be called upon here to state that fact. 2

Q. I don't insist if you do not care to go into it.

A. I think it is the property and business of our company, and I have always held so.

Q. What the ingredients are but not the percentages?

A. I mean the whole thing.

Mr. GROSVENOR: The whole thing is the powder that is used in the sieve.

THE WITNESS: Yes, when it is ready for use.

Q. As I understood you to say to counsel for the Government since 1890 or thereabouts what you call the dry process has been in use? 3

A. No, I think the dry process was in use before that in certain plants.

Q. Maybe it was in use in your plant at that time?

A. It was in use in our plant in the early 90's.

Q. And that is the plan which you say is generally in use now? A. Practically, yes, to my knowledge.

Q. And the plan generally in use is to heat the cast iron and to spread the powder over it?

A. To apply the powder in dry form on the heated article. 4

Q. That is the general process which you say is in use now? A. To my knowledge; yes, sir.

Q. And that has been in use since 1890 or thereabouts?

A. I think it was in use in some plants prior to that.

Q. You have to heat the cast iron to get this powder to adhere to it, do you not? A. Yes, sir; that is the plan.

Q. How hot is the cast iron when you take it out of the furnace, if you know?

A. I don't know the exact temperature.

Q. It is at a cherry red heat, is it not?

A. It is all of that?

Q. And it is between 1200 and 1500 degrees Fahrenheit, is it not? A. That is about right, yes.

Q. How important is it to get the powder on while the article is hot?

A. It is desirable to have it evenly distributed.

Q. And to get it evenly distributed you have to have the temperature of the iron high?

A. You can distribute it even if the temperature is not high, but it would not stay on.

Q. In order to have it fuse, do you know how hot the iron has to be?

A. It should be from twelve to fifteen hundred degrees; it has to be a bright red.

Q. And you have to be as quick about it as you can so that the temperature will not fall? A. Yes.

Q. That is an important element in the manufacture, to move it over quickly. A. It is a factor.

Q. Mr. Grosvenor showed you a sheet of paper having a lot of figures on it which you said was compiled by Mr. Kross, of your office; do you know when that was compiled?

A. In June, 1910.

Q. What part of June? A. The latter part.

Q. Was that compiled somewhere toward the end of June? A. Yes.

Q. Somewhere about June 28? A. Around that time.

Q. Did you send a letter to the Department of Justice or the Attorney-General on or about June 28, 1910?

A. The Government requested of us certain information and we gave it to them in writing. It was addressed to the Department of Justice, although it was called for by Mr. Darling.

Q. Was that the date of the letter, June 28?

A. I think it was, yes.

Q. Was this sheet about which I have just inquired compiled in connection with that letter sent to the Department of Justice? A. Yes.

Mr. Grosvenor: It was attached as one of the exhibits to that letter also prepared at the request of the Department.

Mr. NOBLE: As testified to by counsel for the Government. 1

Q. I now show you Petitioner's Exhibit No. 50 and ask you if that is on your letterhead, that is, your company's letterhead?

A. Why, yes; that is, it was a sheet that was used—yes, it is our paper but it is not our ordinary correspondence paper. It is one of the sheets used after the original.

Q. I called your attention to Exhibits 52-53-54-55-56-60-61-62-63 and ask you if they are also on your paper?

A. I assume that they are; this has no name on it (indicating) but it is the same class of paper that we are using. These are, because they have the names on them. 2

Q. Were those sent as part of your letter of June 28 to which you have referred? A. Yes, sir.

Q. On those exhibits there appear to be letters between E. L. Wayman and Mr. W. J. Kohler.

Mr. GROSVENOR: It is not *on* those exhibits, because it is the letters which are the exhibits.

BY Mr. NOBLE:

Q. Are those copies of letters addressed by Mr. Wayman to you and by you to Mr. Wayman? A. They are. 3

Q. And you furnished those to the Department of Justice at its request? A. On demand; yes, sir.

Q. Were you at that time subpœnaed to produce these letters and furnish them to them?

A. I was notified that the testimony was requested and would be given upon subpœna, and that a subpœna could be issued; that was my information.

Q. Who told you that?

Mr. GROSVENOR: Counsel for Government objects to this line of questioning as immaterial and irrelevant. 4

Mr. NOBLE: Who told you that?

A. I would have to look through the correspondence to find that out.

Q. Who told you that which caused you to furnish these letters because you were told a subpœna could be issued?

A. That is pretty hard to say without having a reference to it here.

Q. You said a moment ago Mr. Darling spoke to you. Was it Mr. Darling who stated that to you?

A. I don't know whether Mr. Darling stated that specifically, but about that time, the middle of June we received a telegram from Mr. Darling asking for certain information, and I was not at home at the time, so there was considerable telegraphing between Mr. Darling and our home office and myself. I could look that up.

Q. At the time you furnished these exhibits to the Government about June 28, 1910, you were not actually subpœnaed? A. No.

Q. In your letter of June 28, 1910, to the Government, or to the Attorney-General's office, did you give them the names of the various companies engaged in the enameled ware business and a history of those companies?

A. Yes, to the best of my knowledge.

Q. Did you write that letter or did you see it before it was sent? A. Yes, sir.

Q. Did you write it yourself?

A. Well, I dictated a large part of it.

Q. The letters which you copied into that letter and sent along as exhibits you got from your files? A. Yes, sir.

Q. And where are those letters now?

A. In the possession of the Government or its representatives.

Q. Now, previous to the telegram which you say was received from Mr. Darling, had you had any correspondence or communication by writing or orally with the Department of Justice or any of its representatives?

A. No, sir; not previous to this demand of Mr. Darling as representing the Government. That was the first intimation that we had.

Q. I show you a letter, Mr. Kohler, dated June 20, 1910, and addressed to Mr. Edwin L. Wayman, and signed J. M. Kohler Sons Company per Walter J. Kohler, and I ask you if that is your signature? A. It is.

Mr. NOBLE: I offer that letter in evidence as Defendant's Exhibit No. 2.

Letter referred to was then marked and filed as "Defendants' Exhibit No. 2."

Mr. NOBLE: I will read that letter:

"June 20th, '10. 1

"Mr. Edwin L. Wayman,
1509 Arrott Bldg.,
Pittsburg, Pa.

"Dear Sir:—

"We have yours of June 17th requesting return of correspondence between your office and ours, which you had forwarded to us, and regret to have to advise that this correspondence was promptly destroyed upon its receipt.

"We trust you have not been inconvenienced 2
thereby, and remain,

"Very truly yours,
"J. M. Kohler Sons Co.,
per Walter J. Kohler,
"WJK-W" Pres."

Q. Why did you tell Mr. Wayman that the correspondence which he returned to you and which you have just testified you furnished copies of to the Government, in your letter of June 28, and furnished to the Government now upon subpœna, was promptly destroyed upon its receipt? 3

Mr. GROSVENOR: I object to that question on the ground that counsel for the defendants has drawn an inference from the testimony of the witness which is not what the witness said. In other words, the witness did not say that he gave to counsel for the Government the correspondence which was returned by Wayman, and the question as read states that he so said.

A. The correspondence received from Wayman was brought in by Mr. Kroos, and as we had all the duplicates 4
of our letters to him and his originals to us, Mr. Kroos had instructions to immediately burn this Wayman correspondence which he had sent us, and in acknowledging Wayman's letter later on, which he asked for, I said that the correspondence between his office and ours had been destroyed. The correspondence which was in our files did not belong to Mr. Wayman, but to our company.

Q. Is that the best explanation which you can make of

the statements contained in your letter of June 20, 1910?

A. That is the statement.

Q. Is that the best explanation that you can make of the statements contained in your letter of June 20, 1910?

A. That is the statement.

Q. I ask you if that is the best explanation which you can make of the statements contained in your letter of June 20, 1910?

THE WITNESS: Will you read my answer?

The stenographer then read the answer to the 4th preceding cross-question.

THE WITNESS: That is my answer.

Q. Is that the best possible explanation you can make?

A. That is my answer.

Q. At the top of Petitioner's Exhibit No. 143 are some words in handwriting. I would like you to state whose handwriting that is? A. That is mine.

Mr. NOBLE: I offer the words written in there in handwriting as Defendants' Exhibit No. 3.

The ink writing contained upon Petitioner's Exhibit No. 143 was then marked and filed as "Defendants' Exhibit No. 3."

RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. I show you the original of the letter of June 17, to which counsel for defendants has just referred, and ask you if that is the letter of Mr. Wayman, a copy of which was just read.

Mr. NOBLE: I did not introduce Mr. Wayman's letter, but Mr. Kohler's letter.

Q. Well, is this the letter of Mr. Wayman your reply to which was introduced by counsel for defendants?

A. It is.

Mr. GROSVENOR: I will read that (reading):

"W-6171028-1

June 17th, 1910.

"Mr. W. J. Kohler,
c/o J. M. Kohler Sons Co.,
Sheboygan, Wis.

"Dear Sir:—

"Under date of June 6th, I returned to you your correspondence covering the period from Aug. 5th to June 1st. Will you be kind enough to return this to me at once?

"Thanking you in advance, I am

"Yours very truly,

"E. L. Wayman."

Mr. GROSVENOR: I offer that as Petitioner's Exhibit No. 152.

Letter of June 17th, 1910, addressed to W. J. Kohler and signed by E. L. Wayman was then marked and filed as "Petitioner's Exhibit No. 152."

Q. In your correspondence with Mr. Wayman you kept copies of your letters to him? A. Yes, sir.

Q. And you kept his originals and copies of your answers also?

A. Both were filed together; that is an office custom.

Q. He sent you his carbon copies of his letters to you?

A. And our originals.

Q. And your originals to him? A. Yes.

Q. Those are the papers you destroyed?

A. Those are the papers we destroyed. The package he returned to us we destroyed. We did not check up each letter to see if he retained any of them, but that was the package which we destroyed.

Q. I show you a lot of letters here, being carbon copies of letters addressed by your comany to Mr. Wayman, and original letters signed by Wayman and addressed to your company? A. Yes, sir.

Q. Are those papers some of the correspondence that you had with him?

A. That is part of the correspondence taken from this file.

Q. From the files of your office? A. Yes, sir.

Mr. GROSVENOR: I offer these as "Petitioner's Exhibit No. 153." Most of these letters have been offered in evidence, and I will not read them. Most of them are originals of the Kohler-Wayman correspondence which counsel has referred to in the cross examination of Mr. Kohler. I count eleven papers here.

Letters referred to were then marked and filed as "Petitioner's Exhibit No. 153."

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

JOHN B. MURPHY, a witness heretofore produced and sworn, resumed the stand for continuation of direct examination and testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR (Continuing):

Q. Mr. Murphy, you testified this morning that you are vice-president of the J. M. Kohler Sons Company?

A. Yes, sir.

Q. And have charge of the Chicago office? A. Yes, sir.

Q. Were you present at a meeting in May, 1910, at your office? A. Yes, sir.

Q. Who was present?

A. Mr. Ahrens, Mr. Torrance, Mr. Clifford, Mr. Kohler and myself.

Q. What was said, if anything, at that meeting with regard to a license agreement?

A. Why, there was considerable talk by Mr. Ahrens and also Mr. Torrance.

Q. What did Mr. Ahrens say?

A. He was very much in favor of it and used his efforts to have Mr. Kohler come in, and Mr. Torrance and Mr. Clifford also, but not as much as Mr. Ahrens. The meeting did not last over an hour or so, when Mr. Kohler said that he was not interested and would not go in, and we finally disbanded and went home.

Q. Was anything said about the legality or illegality of the proposition? A. Yes.

Q. Who said anything about it?

A. I think Mr. Torrance. 1

Q. What did he say?

A. That he understood it to be perfectly legal.

Q. What did Mr. Kohler say?

A. That he did not think so.

Q. Anything else said about it?

A. No, not that I remember.

Q. Was anything else discussed at this meeting of an hour other than the license agreement?

A. Well, license agreement and the resale prices, of course, in connection with it.

Q. I show you two letters; one is on the letterhead of 2
the Standard Sanitary Manufacturing Company and is dated May 18, 1910, and addressed to you as vice-president of the J. M. Kohler Sons Company, from Mr. Theodore Ahrens; and another is a carbon copy of a letter addressed to Mr. Theodore Ahrens and dated May 20, and is unsigned; is that letter from you and was it written by you?

A. Yes, sir.

Q. And did you receive this first letter (indicating)?

A. Yes, sir; I received this letter.

Mr. GROSVENOR: I offer these. One of them is
dated May 18, 1910, and I offer it as Petitioner's 3
Exhibit No. 154, and the other dated May 20, 1910, I offer as Petitioner's Exhibit No. 155.

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 154 and 155" respectively.

Q. Will you look at these exhibits and find which is the answer to the letter which I have just introduced dated May 18 and numbered Petitioner's Exhibit No. 154?

A. This is it (indicating).

Q. That is, Petitioner's Exhibit No. 149 is the answer
to Petitioner's Exhibit No. 154? A. Yes. 4

Q. And Petitioner's Exhibit No. 155 is the answer to Petitioner's Exhibit 148? A. Yes, sir.

Mr. NOBLE: Counsel for defendants objects to the admission of the letter dated May 18 and known as Petitioner's Exhibit 154 on the grounds that it is incompetent, irrelevant and immaterial, being merely a letter between Mr. Ahrens and Mr.

Murphy and having no binding force and effect upon anybody except in so far as it may affect Mr. Ahrens.

Counsel for defendants likewise objects to the admission of the letter of May 20, 1910, addressed by Mr. Murphy to Mr. Theodore Ahrens, it being, as I understand it, an answer to Exhibit No. 148, as incompetent, irrelevant and immaterial, and as having nothing to do with any of the defendants, and as being irrelevant except as far is it may concern Mr. Ahrens personally.

Mr. GROSVENOR: I will read the letter of May 20th from Mr. Murphy, the vice-president of the J. M. Kohler Sons Company, to Mr. Ahrens. (Reading):

"May 20th, 1910.

"Mr. Theo. Ahrens, Pres.,
Standard Sanitary Mfg. Co.,
Pittsburgh, Pa.

"Dear Sir:—

"Acknowledging yours of the 18th, I have read with interest the copies of letters you enclose, and am returning them herewith. Inasmuch, however, as you do not sign the letter presume it was not read by you after inscription. We see no occasion for the final paragraph of your letter, stating that you wish to deny that you are a philanthropist, but you do say that the principal reason in endeavoring to consummate the resale price is because you want to put through some plan that would be to the interest of your customers, and that you are interested in the welfare of the people who sell your goods.

"You did state also, personally, that if the deal did not go through it would cost your shareholders $300,000 this year, as you would be obliged to lower prices.

"It therefore seems strange how you can reconcile both statements, and we will agree that you are not a philanthropist.

"Our position is, briefly: We will protect, as always, the jobber, and the people to whom we sell,

so long as it is to our mutual interest to do so. We will not, however, resort to any method that our attorney advises is in defiance of the law. We are not antagonistic to the resale plan, and our customers, as well as yourselves, know this. 1

"Yours very truly,

"J. M. Kohler Sons Co.,

Vice Prest."

No Cross Examination.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties. 2

JOHN L. SULLWOLD, a witness of competent age produced on behalf of the petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. You are connected with what company?

A. President and secretary of the Western Supply Company of St. Paul, Minn.

Q. What is your business?

A. Jobbers of plumbers' supplies. 3

Q. Do they handle bathtubs and so forth? A. Yes, sir.

Q. Is your business confined to Minnesota?

A. No, sir; we sell in Wisconsin, Iowa, North and South Dakota and Montana.

Q. Do you appear here under subpœna? A. I do.

Q. And that subpœna was served in some detail upon you to produce certain papers, among others mentioned are the letters which were exchanged between you and Mr. Ahrens and Mr. Torrance. Have you produced those letters? A. Yes, sir.

Q. I hand you the papers which you have produced today and ask you to pick out the letters of Mr. Ahrens and Mr. Torrance? A. Here they are. 4

Mr. GROSVENOR: Among the letters you hand me is one dated July 11, addressed to you as president of the Western Supply Company, St. Paul, and signed Theodore Ahrens, President. I offer that letter as "Petitioner's Exhibit No. 156."

1 Letter referred to was then marked and filed as "Petitioner's Exhibit No. 156."

Q. You have produced a carbon copy of a letter dated July 13 and addressed to Mr. Theodore Ahrens and signed by the Western Supply Company. Is that a reply to the last letter? A. Yes, sir.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 157."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 157."

2 Q. You have produced a copy of a telegram dated July 5, 1910, and addressed to Mr. E. L. Wayman and signed by you. Did you send that telegram? A. Yes, sir.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 158."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 158."

Mr. GROSVENOR: I offer in evidence also the letter from Mr. Ahrens dated July 18, 1910, and addressed to John L. Sullwold, care of the Western Supply
3 Company, as "Petitioner's Exhibit No. 159."

Mr. NOBLE: Counsel for defendants objects to the introduction of Petitioner's Exhibit 156 on the ground that it is incompetent, irrelevant and immaterial, and does not refer to any of the defendants. in this case and does not involve any one save Mr. Theodore Ahrens, if it is material as to him, no conspiracy having been proven.

Counsel makes the same objection to Petitioner's Exhibit No. 157 purporting to be addressed by the Western Supply Company to Mr. Ahrens, as incom-
4 petent, irrelevant and immaterial as to any of these defendants.

Counsel makes the same objection to "Petitioner's Exhibit No. 159," which purports to be a letter written by Mr. Theodore Ahrens to Mr. John L. Sullwold.

Mr. GROSVENOR: I will now read Petitioner's Exhibit No. 156:

"Louisville, Ky., July 11, 1910. 1

"John Sullwold, President,
Western Supply Co.,
St. Paul, Minn.

"My dear John:—

"I am very sorry that I did not have a chance to meet you again on the day following our strenuous experience in Chicago."

Q. To what does he refer there?

A. There were a number of jobbers here from the Pacific Coast and we were busy that day in talking to those people, and one part of that was the bar part of it. 2

Mr. GROSVENOR: The letter continues:

"I counted on seeing you without fail, but was kept very busy all day with the California delegation, and could not locate you.

"Mr. Wayman has not advised me whether he finally convinced you that it was to your interest to sign the contract with us and come in. I hope you have done so. We will certainly all feel it very keenly if you oppose us in this matter. 3

"On the day that I left Chicago we had secured signatures from 333 jobbers out of a total of less than 370, giving us fully 90% of the jobbers and more than 90% of the purchasing power. It was reported to us that early last spring you went on record in a communication to Merkel Bros., stating that you were in favor of the resale plan, and would use your best efforts with the manufacturers to have them put out such a plan. I certainly hope that you will not desert us.

"Awaiting your reply, which I trust will be favorable, I am, 4

"Very truly yours,

"Theo. Ahrens,
President."

"A."

"I enclose tab on the evening's entertainment."

Petitioner's Exhibit No. 157, reads as follows:

"July 13, 1910.

"Mr. Theo. Ahrens, Prest.,
Standard Sanitary Mfg. Co.,
Louisville, Ky.

"Dear Sir:—

"Replying to yours of the 11th beg to say I am also sorry I did not see you again; but from the attitude taken by your company in our correspondence and from the way they treated our Company in not advising us in any way about what they proposed to do in this resale plan, not protecting us in any way as I understand they did their favored customers, and from conference had with Mr. Wayman I was very much in doubt whether you wanted to see me again about this matter.

"Yes, I did write Mr. Merkel that I was in favor of a resale plan on enameled ware and I am now in favor of a legitimate resale plan on enameled ware. To my mind the present plan is not legitimate, but is purely a hold-up scheme to make Mr. Wayman thirty or forty thousand dollars per year and several millions for men who are already rich, and also putting on their feet a number of smaller enameled ware manufacturers who were anxious to get into the enameled ware business, but who could not stand alone and meet the competition of the larger and older manufacturers of this commodity, and also to put on their feet a lot of men in the jobbing business who wanted all the trade and made prices to crowd out their competitors and did not know enough to run a jobbing business, and by so doing they were putting themselves out of business

* * *

"The present resale scheme will build up the fellow who cannot produce enameled ware as cheaply as your company can and in a year or two there will be from ten to twenty more enameled ware manufacturers in the country. Your patents are only a subterfuge and are not essential in the manufacture of enameled ware. Any one can go into the business. The resale plan will go to pot and

the jobber will be worse off than ever. You may not care, as you have money enough and may want to get out from under before the trouble comes and you may feel— 'To h—— with the public,' as the old saying is. Why not be fair in this matter and not make it harder for the future generation than you can help? * * * 1

"While in Chicago I heard a Pacific Coast jobber say he did not care what the manufacturers did as long as he could make a good profit. This man failed in Minneapolis about eighteen years ago.

"Now, why the advance in enameled ware at this time, when all other commodities are on a decline or hanging on by their eyelashes to maintain present prices, excepting possibly a slight advance to pay the expenses of a man, printing, postage, etc.? 2

"As to the treatment we received, I was in Chicago twice in May and tried to get a line on what was proposed, but could get no information. I inquired if there would be an advance in price. Was told there would not. I was not consulted at all as to how we would like this deal. Now, I find that the Crane Co. were in conference several times during this period, they acquiesced in this scheme, adopted the resale plan and can sell any ware they wish to without any restrictions, they knowing what was going to happen, advised their trade, got in and covered. The United States Supply Co., a would be jobber of this city, who handles the U. S. Sanitary Mfg. Co.'s goods, I find also went around to the trade prior to June 1st and filled up every one who would buy from them at old prices. I am also advised that other favored customers of yours were protected and were advised that an advance would take place so that they could cover. Your company took our good hard money for twenty years but you never advised us. Last spring, after a conference with you and Mr. Torrance in Chicago I bought five hundred tubs from you and paid you forty cents apiece more for them than I could buy an equally first class tub for, made by a reliable manufacturer. On this one order our Company paid you two hundred dollars more, to be loyal to you; 3 4

not I presume because we bought a lot of Kohler ware every year that we were practically compelled to introduce into this market, after offering the business to the Standard Sanitary Mfg. Co., who turned it down with the statement that they were not in a position to take on any more customers on small ware at that time and that they were already oversold, you did not count on us as one of your loyal customers. Why should the Crane Co. enjoy, just because they are large buyers, privileges that are not granted us? The first thing we knew about the whole plan was when we received from the different manufacturers a letter advising us to sign a resale plan and that unless we did we could get no more goods. I wrote Mr. Wayman for permission to sell Kohler ware as provided for in the agreement and was refused point blank.

"Paragraph 10 in the resale agreement is coercive, non-American, unjust and, we belive, illegal, denying us our individual rights.

"Since my conference with Mr. Wayman in Chicago he wrote, granting permission to sell Kohler ware *until further notice*. Which might be withdrawn within twenty-four hours after he had our signature. This proposition is an insult to any one with ordinary intelligence and I told him so.

"Now, I am not setting myself up as a socialist or a modern reformer, or a man with better judgment than the men who signed this agreement. Our company has always and do now believe in making a reasonable profit on everything that we sell and are also willing that the manufacturers should have a reasonable profit. In fact, our policy has always been never to sell goods or let them leave our store unless there was a reasonable profit in the sale. We, as you know, started small twenty years ago and if we had not done business along these lines we would not have the monument to show for our labors that we have today; but, using Theo. Roosevelt's favorite term 'We want a square deal to all and are in favor of a square deal to all.'

"We are going to run our own business, we absolutely refuse to sign the resale plan as now out-

lined, come what may. We realize that this will 1
cost us some money and annoyance. We have in the printers' hands at the present time six thousand dollars worth of plumbing specialty catalogues, illustrating a great many of the Standard Sanitary Mfg. Co.'s specialties. We are holding this up. We do not know what list to use and further, before we are coerced into signing away what we believe to be our rights, we will not illustrate the goods at all and cut them out entirely. We realize and appreciate fully that the Standard Sanitary Mfg. Co. can get along very nicely without us, but we are also 2
egotistical enough to believe that we can also remain in business without them.

"As already advised Mr. Wayman, we will now use all honorable methods to break up this, as we believe, illegal combination.

"I regret very much indeed that there is this difference in our opinion. I want to thank you personally and also the other members of your company and your employes, whom I have known for many years, for the courtesies that I have received at their hands. There is nothing that has come up in 3
our business in years that I have given so much careful consideration. Have not acted in haste. I have conferred very seriously with my partner, Mr. Bettingen and am acting in absolute good faith, taking the stand which I believe to be right and just.

"Yours very truly,
"Western Supply Co.,
"dict.J.L.S." Per J. L. Sullwold."

Mr. NOBLE: Counsel for defendant moves that the contents of the letter of July 13, 1910, known as 4
"Petitioner's Exhibit No. 157" be stricken out as having no bearing on this case and as expressing the views only of the writer, Mr. Sullwold, and as having no relevancy, competency or materiality to any of the defendants in this case or to any of the issues involved.

Mr. GROSVENOR: Petitioner's Exhibit No. 158 reads as follows:

1

"July 5, 1910. Paid.

"E. L. Wayman,
c/o La Salle Hotel,
Chicago, Ill.

"Will meet you La Salle Hotel three o'clock tomorrow afternoon.

J. L. Sullwold."

Petitioner's Exhibit No. 159 is a letter from Mr. Ahrens to Mr. Sullwold, and reads as follows:

"Louisville, Ky., July 18, 1910.

2

Mr. John H. Sullwold,
c/o The Western Suply Co.,
St. Paul, Minn.

"My dear Sullwold:

"Your letter of July 13th reads as if the argument made by Mr. Fowle before the Stratford Hotel bar and other bars in Chicago, really produced an impression on you. Let me say to you that it is unfair in the extreme, and what is worse, you make statements that you cannot substantiate, but I want

3

to answer it, not because I believe I can influence your opinion, but because I cannot allow such misstatements as you make to go unchallenged. Personally, so far as I am concerned, I do not care whether you sign up or not. This is personal.

"Your first argument that we are injuring ourselves, and building up our competitors, is advice that we do not need. Like you, we claim the right to run our own business, and to decide what is good for us.

"Your second point that the resale plan is not a

4

good thing for the legitimate jobber, is answered by the fact that within thirty days after the jobbers' contracts were sent out, 90% of the legitimate jobbers of the United States had signed and returned them.

"You say our patents are only a subterfuge. How do you know that? What right have you to call these patents a subterfuge? You do not know what you are talking about when you say this. Neither

does your informant, even if it is Walter Kohler, 1
or J. B. Murphy. * * *

"You ask why an advance should be made at this time. In reply we can say that our prices under the resale plan are no higher than they were before June 1st, with the exception of the Missouri River territory, where we have heretofore paid excessive freight allowance, and where we have now equalized so that our product will give us the same return in that territory as in the rest of the United States. Our prices in New York City, Philadelphia, Boston, Chicago, Pittsburgh, Cleveland, Louisville, and in 2
fact through the entire East and Central section of the country are as low as they were before the resale plan went into effect. It happens that in your particular territory they are slightly higher.

"Your complaints that the Standard Sanitary Mfg. Co. has not given you proper treatment; that you were not given opportunity to cover yourself before June 1st and that you were not consulted with regard to the resale plans, are all unfounded.

"I have just talked to Mr. Verity on the long distance; called him up especially to find out whether he 3
had offered to take care of you before June 1st. He advised me that he called on you about May 20th, and that you told him you were not in need of anything, as you had a good stock on hand and did not want to buy any more. We have at all times been willing and anxious to serve you to the best of our ability and to give you the best we had in the shop, both as to service and price.

"I believe we have done so. It is true that we conferred with the Crane Co. on this plan. It is also true that we did not take it up with you direct. 4
Our reason for not taking it up with you direct is because we were advised that you were heartily in favor of the resale plan, and so expressed yourself both in writing and verbally. It was necessary for us to take it up with the Crane Co. on account of their prominence, and the fact that they are the largest distributors of Enameled Iron Ware in the United States. It was not possible for us to take it

1 up with all our good friends, as much as we would have liked to do so, as it was a physical impossibility to do this.

"I understand that you are sending out a copy of Kohler's letter to the trade, and are advising your customers that you are opposed to us. You say in your letter to me that paragraph 10 of the resale agreement is coercion, un-American, unjust, and you believe is illegal, as it denies you your individual rights.

"Let me ask you why we should not have the same
2 rights to refuse to sell our goods to someone as Kohler has, and as he is now doing? Right next door to you in Minneapolis, the Crane Branch has the exclusive sale of Kohler goods, and Kohler has repeatedly turned down orders for his enameled ware sent in by the Central Supply Co. Try it yourself and see whether he will fill the orders for you, yet you blame us for now doing the very thing your friend Kohler has been doing for several years.

"Now I am very sorry indeed to receive this letter from you. Personally, I do not care whether you
3 sign or not. I know that you can get along without us just as well as we can get along without you, but I do not like the idea of an old friend and customer like you telling me that we are a lot of highbinders and pirates. That sort of talk might do all right when we are doing Chicago, and ordering up just one more about every five minutes, but it is not fair to us when you really sit down in your office and in sober earnest write us such a letter. The Standard Sanitary Mfg. Co. has always, and is now doing a clean, honest and legitimate business, and we take no back seat as against your concern, or any other.

4 "I want to add that I hope this difference of opinion between us on a business matter will not cause any break in our personal relation. I am coming up to see you this summer, and I will promise not to talk resale agreements, or to ask you for any of your business. You can run your business just as you please, and we will do the same, but I hope before another 12 months rolls around that we

can convince you by the actual facts of the case that the position you have taken is all wrong. 1

"Yours very truly,

Theo. Ahrens,

"A. President.

"P. S. In dictating this letter, I forgot to say that resale prices are not an unusual thing. No doubt your are maintaining them on some items that you sell. Wrought Pipe, for instance, Penberthy injectors. In other lines of business they are quite common and cover many of the things that you eat, drink, wear and use, such as, for instance, Ivory Soap, Winchester Cartridges, Breakfast Food, etc., etc." 2

BY MR. GROSVENOR:

Q. With reference to Petitioner's Exhibit No. 158, had you received any communication asking you to be there?

A. I think I did, but I could not find that.

Q. Did you go to Chicago? A. Yes, sir.

Q. Did you meet Mr. Wayman? A. Yes, sir.

Q. Did he ask you to sign an agreement? A. Yes, sir.

Q. Did you do so? A. No, sir. 3

MR. GROSVENOR: This letter (indicating) is dated June 13, 1910, and is addressed to Mr. F. J. Torrance. I offer that as "Petitioner's Exhibit No. 160."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 160."

MR. GROSVENOR: That letter reads as follows:

"June 13, 1910.

"Mr. Francis J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburgh, Pa. 4

"Dear Sir:—

"The resale price as outlined does not look very good to me. We have, as you know, been handling the Kohler small ware, have same illustrated in our catalogue and have quite a large stock of them on hand. I have written Mr. Wayman for permission to continue to handle this ware. This he has refused.

The Kohler people do not seem inclined to go into this arrangement.

"While we expressed ourselves several months ago, when approached on the resale proposition, as being in favor of a resale plan, we find that the plan now proposed is working an injury on us, as under the proposed arrangement we will make a smaller profit on enameled ware, outside of the two year guarantee tubs, on which the profit would remain about the same. By this plan the manufacturers propose to increase their profits materially at the expense of the jobber who has had business ability enough to get a fair profit on the goods he sold. As the writer sees it, this emanates from the eastern jobber who did not know enough to get a reasonable return on merchandise sold; but knifed each other to the extent that they found they were not making any money. Now they want to pull in all the jobbers in the United States in this arrangement, which is unfair to us.

"I am not adverse at any time that a manufacturer should increase his profits to get fair returns on money invested providing he does not do it at our expense.

"I am not at all sure that the resale price on enameled ware and quite a number of other commodities is a permanent good thing for either the manufacturer or the jobber. It seems to me it only lets down the bars for both manufacturer and jobber to invite more competition, which is very difficult to exterminate when once established. This has been demonstrated by some of the largest concerns in the country, who have built up competition by holding their prices on their products above normal and afterwards, when they found the damage they had done, they dropped their prices materially. A year ago last February the National Tube Co. lowered their price ten dollars per ton on pipe. A year ago last January the American Radiator Co. lowered their price on house heating boilers 20% and on radiators 10%. Several years ago the earthenware manufacturers did the same thing. The enameled ware manufacturers also did this same thing, with the result

that they were all holding the umbrella so that others could get into the game and I am of the opinion that if a resale price were to be established on a majority of the commodities we sell that we would have one hundred and fifty new jobbers in the United States in the next twelve months besides numerous new manufacturers. 1

"The hardware jobbers today are endeavoring to sell everything from a tenpenny nail to a gold watch. They are very anxious to get into the plumbing supply business, particularly in the west. The Marshall-Wells Hardware Co. of Duluth have declared to one of our friends within a week that they now have practically a complete line of plumbing supplies and that they propose to go into this business so that they can supply the hardware men throughout the country, whom they sell, with plumbing goods. This would mean that every general store in the small towns that carries a small line of hardware, as they usually do, would be able to purchase plumbing goods, to be put in by a blacksmith or a tinsmith. This will work an injury to every jobber and every legitimate retailer in plumbing supplies. 2 The prices are fixed so that it will encourage new manufacturers in plumbing supplies. 3 There will undoubtedly be an overproduction; these manufacturers will want to dispose of their products and the hardware jobber will have no trouble in getting into this business. Up to date the hardware jobber has been fairly controlled and it seems to me that it would simply force the legitimate jobber of plumbing supplies today, who have the capital to carry out the plan, to market his product on the Sears-Roebuck plan—to sell to any one who has the price. If this was carried out it would upset the whole jobbing business as well as to decrease the earning power of the largest manufacturers now in business and it would mean a total demoralization of the whole plumbing supply proposition. 4 I am therefore not in favor of a resale plan on enameled ware as outlined.

"I do not like to be arbitrary or be contrary to bettering the conditions; but I do not think it is

justice that our Company should be called on to pay the expense of the jobber or jobbing community who do not know how to carry on a legitimate jobbing business.

"Would be pleased to have a line from you.

"Yours very truly,

Western Supply Co.,

"dict. J.L.S. Per J. L. Sullwold."

Mr. GROSVENOR: The next is a letter dated June 16, 1910, and addressed to Mr. Sullwold by Mr. Torrance. I offer that as "Petitioner's Exhibit No. 161."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 161."

Mr. GROSVENOR: That letter reads as follows:

"Pittsburgh, U. S. A., June 16, 1910.

"Mr. J. L. Sullwold,
Western Supply Co.
St. Paul, Minn.

"My dear John,

"I was greatly disappointed at not seeing you at Toledo yesterday. I went there more to see you than any other one person and as I say, was greatly disappointed.

"I explained as well as I could the conditions to Mr. Frye. I want to say to you, Friend Sullwold, that we went into this proposition at the request, if not the behest of the jobbers, and if it is not to their liking, it will be a great disappointment to me. I am sorry I ever heard of the scheme because it does not seem to be appreciated by all of the jobbers and it should be. My argument is simply this:

"The resale agreement is the only legal remedy that can or may be applied to better conditions as they exist in the larger majority of jobbing centers. The opinions expressed in the meetings yesterday are just those as previously expressed to us individually and collectively. Where the conditions are bad, and that's pretty general, they want the resale proposition but it seems they want the other fellow to have it and the particular party in question wants to be allowed to do as he pleased. This, of course, we

can't do. If the resale scheme for iron pipe is a good one and has made, as generally expressed, a profit for the jobber, then why is not a similar scheme for enameled iron, particularly so when it is along such lines (and we believe it so to be) as will not meet with opposition on the part of the Courts. The whole thing seems to be a mystery as well as a disappointment. 1

"Here is a proposition which assures the jobber of a profit and assures him a steady and continuous market so far as profit is concerned, permits him to know almost to a certainty what his neighbor's goods are costing him and therefore what his competition is based upon, the profit being the same for each, excepting in the case of the smaller jobber who does not buy a sufficient quantity to obtain a preferential or quantity discount, and which extra discount we believe the larger buyer is entitled to, although on this score, men like Doctors, differ. 2

"I have worked for eight weeks very strenuously on this matter, not only at the risk of my personal comfort but even of my health because it has taken my time from my own regular line of work, compelling me to do this regular work afterwards and make up for it and to find now that it is spent on a cause that is, to a degree, distasteful and obnoxious to the very people who will be benefited by it and to find *any* opposition is rather a surprise to us. 3

"I have only to say that we have over one hundred sixty (160) jobbers who have registered with us. I do not know how many have registered with the other manufacturers, parties to the agreements. The names cover from the Atlantic to the Pacific; with the exception of one customer in New England, all the trade there have signed up. This one has a particular reason but I think will come in. 4

"Yours very truly,

"Fran. J. Torrance,

"FJT" V. P."

Q. The next is a letter of June 21, 1910, addressed to Mr. Torrance, of the Standard Sanitary Manufacturing Company, Pittsburgh, Pa. Was that letter written by you?

A. Yes, sir.

Mr. GROSVENOR: I offer that as Petitioner's Exhibit No. 162.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 162."

Mr. GROSVENOR: That letter reads as follows:

"June 21, 1910.

"Mr. Francis J. Torrance,
Standard Sanitary Mfg. Co.,
Pittsburgh, Pa.

"My dear Torrance:

"I have yours of the 16th and note contents carefully. I assume that you did not receive my letter of the 13th, in which I tried to explain fully my feeling in the matter.

"I have been in the plumbing supply business ever since I was sixteen years old, I have been at the head of this Company for twenty years, I have been fairly successful and I trust without getting what is commonly called—the swelled head. I attribute the success of this Company to two things. Our policy from the very start was never to let any goods go out from our store unless we received a reasonable profit in return regardless of what our competitors were doing and, as you know, our big competitors in this market did not give us the glad hand or welcome to our city. The other was—good, honest hard work. I can therefore state from actual experience that any one going into any line of business that applies these two principles to his business cannot help but be successful.

"The present resale plan on enameled ware would cost our Company quite a little sum of money annually besides throwing down the bars to invite competition both for the manufacturer and ourselves.

"You refer to the resale scheme on iron pipe. This scheme is on an entirely different basis. A year ago last February the National Tube Co., after holding their prices above normal for a number of years, woke up suddenly and found they had built up some good stiff competition that was cutting into their

tonnage. They immediately took steps in their own 1
organization, without consulting any one, to cut the price ten dollars per ton. This cut cost the jobbers that had a stock of pipe on hand, I would estimate two hundred thousand dollars. In order to reimburse the jobber in a measure for this they promulgated a resale plan and intimated to the independent mills that if the price to the jobber on the resale plan would not be maintained that they (the National Tube Co.) would cut the price again. They did not go to the jobber however and tell him that he must confine his sales to certain manufacturers 2
as has been done in the enameled ware scheme.

"Now friend Torrance, just a word as to our relations with you. Ever since we have been in business, 95% of the bath tubs we have handled have been of your make and quite a little small ware. We have a copy of a letter on file here which I wrote you several years ago, in which I told you frankly that it was my desire to purchase all our enameled ware from your Company and asked you what you could do for us. You replied that we had your regular discount sheet and the prices therein were the best you had. You stated further that as to 3
small enameled ware you were already oversold and that you thought it best to advise us frankly as to your conditions and that you could not take us on at that time on our small enameled ware requirements. There was nothing left for us to do except to make arrangements for small enameled ware with another company and we decided on the Kohler goods. That ware up to that time we had handled only in a small way. This concern were progressive, they made good ware, made lots of it and they supplied us with our requirements with the result that we 4
established a large trade on Kohler small enameled ware throughout the northwest, which we still enjoy, and we have same illustrated in our catalogues and you know they cost money. Now Mr. Wayman tells us that we must cease buying Kohler ware, destroy our catalogues or the licensed manufacturers will not sell us. One of the licensed manufacturers has al-

1 ready refused to ship us goods until we sign the agreement.

"Another feature that I cannot understand is how the Crane Co. can sell Kohler ware in their Minneapolis store, Standard Sanitary Mfg. Co.'s ware in their St. Paul store, and both in their Aberdeen, Fargo and Duluth branches. Some of these things have got to be made clear to me before I can be railroaded into a scheme, which, as I see it now, is going to cost The Western Supply Co. several thousand dollars a year in loss of profits, and increase
2 the manufacturers' profit materially for the time being only, as I feel confident that with the prices asked for by the manufacturers at this time, when there is no advance on any other commodity in this line, it will only build up competition for the manufacturer as well as for the jobber, as there is no combination on earth that can beat the man that will work hard and market his goods at a profit. It is impossible for the largest manufacturer in the country to compete with him or put him out of business except at a great loss to themselves.

3 "Again, we find that the United States Supply Co. of this city, who should not be recognized as jobbers at all, but as brokers, are handling the United States Sanitary Mfg. Co.'s line and their salesman informed one of our men today that they had no instructions as to maintaining a resale price.

"I regret very much that I was not able to attend the C. S. A. meeting at Toledo, as we had our annual stockholders' meeting on the 14th of this month. We had matters of importance coming up at this meeting and it was impossible for me to get
4 away. Again, it works quite a hardship on us to attend a meeting east of Chicago as it practically requires a week to attend these meetings.

"I am sorry that our opinions differ in regard to the resale plan as now outlined and I have decided not to sign this resale plan and, as I understand it, you will not ship us any more goods until this agreement is signed. Our Company will therefore fight this out to the best of our ability.

"Beg to assure you there is no personal feeling in this matter at all. It is simply a clear case of where I feel that our pocket-book is being legislated against by people who are living in your territory where the conditions are entirely different from what they are here and I do not see why we should be called upon to pay for their folly. On the whole I feel that this scheme was railroaded through in altogether too much of a hurry and the jobbers who have ruined their own business through their own folly were ready to take anything and urged the manufacturers strongly to adopt this scheme. 1 2

"Yours very truly,

"Western Supply Co.,

"dict.J.L.S." Per J. L. Sullwold."

Q. The next is a letter addressed to you by Mr. Torrance under date of June 23, 1910. Did you receive that?

A. Yes, sir.

Mr. GROSVENOR: I offer that as "Petitioner's Exhibit No. 163."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 163."

Mr. GROSVENOR: That letter reads: 3

"Pittsburgh, U. S. A., June 23, 1910.

"Mr. John L. Sullwold, Prest.,
Western Supply Co.,
St. Paul, Minn.

"My dear John,

"I am obliged by your letter of the 21st but am not sure that the contents are equally good for both of us. I think you would be better to go along with us in this matter because the paramount object in it is for the benefit of the jobber, not the manufacturer. The only real gain that the manufacturer has to hope for is the increased sale and use of enameled iron instead of some other materials. 4

"Your experience, owing to territorial conditions, may be different from that of other jobbers and it certainly is, taking your statements at their face and we have no desire or reason to take them other

wise. All over the country we have been hearing that enameled ware was profitless to the jobber and that there was more money in solid porcelain, vitreous china and other goods which might be readily substituted both to the satisfaction of the consumer and the advantage of the jobber. We went into the scheme for that reason alone, i. e., to make our goods profitable to those who handle them. We have no ulterior motive whatever.

"As to the legality of the scheme, we have no doubt, else we would not have gone into it. We may be mistaken in this and time alone will prove it.

"As to Kohler's attitude in the matter, this is simply his own stubborn ideas in the matter. He is standing out against the wishes of, to the best of my knowledge, at least 75% of his customers and as they put it, preventing their making a proper and reasonable profit on their goods.

"In the matter you speak of as to our small ware, would say it is many years since we were able to take care of you on small ware and the recent reasons given by you for purchasing small ware from Kohler were simply that you could get from Sheboygan mixed cars which you could not get from here. How correct this is, I am not just sure of at the present time but I can't just understand how, under the Inter-State Commerce, you could get anything different from Sheboygan than you could get from Pittsburgh or New Brighton. If it is a good thing for one concern, it ought to be for all. I can't see it in any other light unless it would be the selfish position which some manufacturer might temporarily occupy to the disadvantage of his competitor or neighbor.

"Let me ask you, do you not handle any goods on a resale agreement. I understand you do but I may be misinformed. Let me also ask you if the resale pipe business has not been a profitable one. While you make some criticism about the method of its establishment and we have no objection to your arguments whatever, you do not say that it has not been profitable and I assume, as you do not say to the

contrary, you are a party to it and are working under it. 1

"The reference you make on the second page of your letter in which you advert to our (at least, I so take it) going to the jobber and telling him what he must do, you must bear in mind that all this is predicated on certain patents, the validity of which have been established by the United States Courts in New York, Chicago and Pittsburgh. There has been no desire on the part of those prompting this scheme to shut out anybody, either manufacturer or jobber; in fact, all manufacturers were invited, urged and coaxed to come in. In fact, there has been no attempt whatever to shut any one out. The policy has been positively and energetically to the contrary. 2

"I hope you will think the matter over and come along because we would like to continue our very pleasant relations with you.

"Yours very truly,

"FJT" "Francis J. Torrance."

Q. And the next is a letter dated June 27, 1910, and addressed to Mr. Torrance by you. Did you write that letter? A. Yes. 3

Mr. GROSVENOR: I offer that letter as "Petitioner's Exhibit No. 164."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 164."

Mr. GROSVENOR: That letter reads as follows:

"June 27, 1910.

"Mr. Francis J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburgh, Pa.

4

"My dear Torrance:—

"Note yours of the 23rd and I am satisfied beyond a doubt that your ideas and mine do not agree. I am going to answer a few of your questions and remarks.

"You state that the reasons given by us for purchasing small ware from Kohler were simply that we could get from Sheboygan mixed cars which we

could not get from you. You are surely in error about this as we could not make this statement and make it truthfully, as Kohler cannot ship combination cars of small ware from Sheboygan to St. Paul or any other western point. This is a privilege however that the Interstate Commerce Commission has allowed you to enjoy. We have been able to purchase of you and could today, if you were willing to sell us, mixed carloads of enameled ware shipped to St. Paul and shipped west from here; or in other words, we could ship direct to our customers mixed carloads of enameled ware from any of your plants. Where you got this idea we are at a loss to understand.

"You ask 'Do you handle any goods on a resale agreement?' Replying to same I will say 'No sir'! We are however today selling two commodities on a resale price established by the manufacturers. One is wrought pipe; the other is Penberthy injectors. These people do not say to us, however, 'If you want to enjoy this resale price we want to advance our selling price to you, you must confine your purchases to certain manufacturers or we will not sell you, and you must be satisfied with a smaller profit than you are now getting, because certain jobbers in the east are not enjoying the profits that you are making and they are satisfied with our plan; why should not you be?' I have paid my respects to the business methods of some of the eastern jobbers in my former letter and I do not see why we should be called upon to pay good hard earned money for the follies of others.

"I want to say right here that I am in favor of a resale plan that is legal, a resale plan that is just and fair to every one, that will net a reasonable return to the manufacturer and a reasonable return to the jobber. Every laborer is entitled to his hire, every capitalist is entitled to a legitimate fair return on his capital, every manufacturer is entitled to a fair return on the goods he produces and in addition to this he is entitled to a reasonable return for the hazard there are in his business. I am absolutely

opposed to any combination of manufacturers, jobbers or any one else to bleed the public. I never have been a party to any combination of this kind and never will be, even though it be legalized. By this I mean that neither manufacturer or jobber has any right to exorbitant profits. It never has and never will end well. I am not in favor of the resale plan adopted by the enameled ware manufacturers as you now have it and will not become a party to same. 1

"Reading between the lines in your letter I now understand that you do not want any of our orders unless we sign your license agreement. Kindly advise us if this is true so that we may not lose our own time and take up yours by sending you these orders only to be returned and so that we may advise our customers that our Company is not in a position to furnish licensed enameled ware. 2

"Yours very truly,

"Western Supply Co.,

"dict.J.L.S. Per J. L. Sullwold."

Q. And the next is a letter addressed to Mr. Myler and dated June 10, 1910, and signed by you. Did you send that letter? A. Yes, sir. 3

Q. Was that in reply to a letter received from him?

A. Yes, but I don't think that the letter received had any bearing on the matter, and I referred to the resale plan.

Mr. GROSVENOR: I offer that letter as "Petitioner's Exhibit No. 165."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 165."

Mr. GROSVENOR: That letter reads as follows:

"June 10, 1910. 4

"Mr. W. A. Myler,
c/o Standard Sanitary Mfg. Co.,
Pittsburgh, Pa.

"Dear Sir:—

"I have your recent letter withdrawing preferential discounts. We also have resale proposition submitted to us.

"As far as our Company is concerned, I can see where the resale plan submitted is increasing your income materially, as, if I understand the plan correctly, it increases the cost to us materially. The proposed resale price is considerably less than we are now getting. In other words, the profit on the resale plan to us is less. We have always been able in this market to maintain a selling price that netted us a fair return on our investment and, as I see the situation now, it seems that just because a lot of the eastern jobbers were not able to maintain a respectable selling price on their product they have appealed to the manufacturers to help them out by adopting a resale plan at our expense. On everything excepting the two year guarantee tubs we are getting a better price than the resale plan will give us and on the tubs in question we have been getting at least as much profit, if not a little more; so you can naturally see that this plan does not appeal to me at all for the simple reason, while I am not adverse to increasing your percentage of profit, that it is cutting down our profit on enameled were materially, which, if adopted, will cost us a good deal of money at the end of the year.

"Yours very truly,

"Western Supply Co.,

"dict.J.L.S. Per J. L. Sullwold."

Mr. NOBLE: I offer the same objections to the receipt of these letters as I offered to the letters between Mr. Sullwold and Mr. Ahrens.

Mr. GROSVENOR: The witness hands me a batch of papers which I will offer in evidence. One is a letter of June 4, 1910, from the Standard Sanitary Manufacturing Company to the Western Supply Company and signed by Mr. Torrance and states: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware." I offer that letter as "Petitioner's Exhibit No. 166."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 166."

Q. Was this jobber's license agreement enclosed?

A. Attached to it.
Q. And that is the same as Petitioner's Exhibit No. 11?
A. Yes. 1

Mr. GROSVENOR: Now I offer the letter dated June 6 from the Wheeling Enameled Iron Company, containing the sentence: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," as "Petitioner's Exhibit No. 167."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 167."

Mr. NOBLE: I note the same objections to all of these letters as was heretofore noted. 2

Q. Was this jobbers license agreement similar to Exhibt No. 11 enclosed with Petitioner's Exhibit No. 167?
A. Yes.

Mr. GROSVENOR: I offer in evidence the letter dated May 31, 1910 on the letterhead of the McCrum-Howell Company, and addressed to you and signed by Howard T. Gates, secretary, containing this sentence among others: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," as "Petitioner's Exhibit No. 168." 3

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 168."

Q. Was this jobber's license agreement enclosed, which is similar to Exhibit No. 11? A. Yes, sir.

Mr. GROSVENOR: Now I offer as "Petitioner's Exhibit No. 169," the letter of June 1st on the letterhead of the Union Sanitary Manufacturing Company, containing this sentence among others: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware." 4

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 169."

Q. Was this jobber's license agreement similar to Government Exhibit No. 11 enclosed with that letter?
A. Yes, sir.

1 Mr. GROSVENOR: I also offer the letter of June 1, 1910, on the letterhead of the Cahill Iron Works, containing this sentence: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," as "Petitioner's Exhibit No. 170."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 170."

Q. Was this copy of Exhibit No. 11 enclosed?
A. Yes.

2 Mr. GROSVENOR: I offer the letter now dated June 13, on the letterhead of the L. Wolff Manufacturing Company, containing this sentence among others: "It is necessary for you to execute these contracts before we can sell you any licensed sanitary enameled ware," as "Petitioner's Exhibit No. 171."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 171."

Q. And were these jobber's license agreements enclosed which are similar to Exhibit No. 11? A. Yes, sir.

3 Mr. GROSVENOR: I offer now in evidence the letter dated June 4, 1910, on the letterhead of McVay & Walker, containing this sentence among others: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," as "Petitioner's Exhibit No. 172."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 172."

Q. Were these contracts which are similar to Exhibit No. 11 enclosed with that letter? A. Yes, sir.

4 Mr. GROSVENOR: I offer this telegram of June 22 from E. L. Wayman to you as follows:

"Pittsburg, Pa., 22 '10.

"J. L. Sullwold,
Care Western Supply Co.,

"Please wire at once at my expense if you have executed or intend to execute jobber's license *agreement*.

"E. L. Wayman."

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 173." 1

Q. Did you receive that from Mr. Wayman?
A. Yes, sir.
Q. And this telegram (indicating) was a copy of your reply? A. Yes, sir.

Mr. GROSVENOR: I offer that telegram as "Petitioner's Exhibit No. 174."

The telegram referred to was then marked and filed as "Petitioner's Exhibit No. 174" and reads as follows:

2

"June 22, 1910.

E. L. Wayman,

Arrott Bldg., Pittsburgh, Pa.
No Sir and do not intend to

J. L. Sullwold."

Mr. GROSVENOR: I offer certain letters between you and the Cahill Iron Works Company as follows: The letter of June 8, 1910, addressed to the Western Supply Company and from the Cahill Iron Works, as "Petitioner's Exhibit No. 175."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 175." 3

Mr. NOBLE: I offer the same objections to all of these letters as were heretofore noted.

Mr. GROSVENOR: I also offer the letter addressed to the Cahill Iron Works and dated June 10, 1910, from the Western Supply Company per J. L. Sullwold, as "Petitioner's Exhibit No. 176."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 176."

Mr. GROSVENOR: And I also offer the letter from the Cahill Iron Works to the Western Supply Company dated June 14, 1910, as "Petitioner's Exhibit No. 177." 4

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 177."

Mr. GROSVENOR: And I further offer the letter from the Western Supply Company to Cahill under date of June 16, 1910, as "Petitioner's Exhibit No. 178."

1 The letter referred to was then marked and filed as "Petitioner's Exhibit No. 178."

Mr. GROSVENOR: The next is dated June 20, 1910, and is addressed to the Western Supply Company and signed by the Cahill Iron Works, per F. H. Caldwell. I offer that letter as "Petitioner's Exhibit No. 179."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 179."

Mr. GROSVENOR: The next is dated June 23, and is addressed to the Cahill Iron Works and signed by
2 the Western Supply Company. I offer that as "Petitioner's Exhibit No. 180."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 180."

Mr. GROSVENOR: I offer the letters exchanged between you and your company and E. L. Wayman as follows: The letter of July 9th from Mr. Wayman to Mr. Sullwold as "Petitioner's Exhibit No. 181."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 181" and reads as follows:

3 "Edwin L. Wayman
Arrott Building
Pittsburgh

"W-791022-I
"July 9th, 1910.

"Mr. J. L. Sullwold,
c/o The Western Supply Co.,
St. Paul, Minn.

"Dear Sir:—

"Referring to our conversation in Chicago with
4 reference to Jobbers' License Agreement, I had hoped to take the matter up further with you the next day but was unable to locate you.

"In accordance with our conversation, I wish to supplement my letter of June 10th with the following:

'If you will execute the Jobbers' License Agreement, it will be satisfactory for you to continue purchasing Ware made by the J. M.

Kohler Sons Co., Sheboygan, Wis. until further notice, with the understanding that you will stock some Licensed Ware and push the sale of it and that you will furnish me with the amounts of your total purchases from the Kohler Co. monthly. These amounts need not be itemized.' 1

"I hope that Mr. Kohler will in the future see fit to manufacture Ware under Patents that I own for the reason that I believe he can make better goods than he is making at the present time and more economically. I had hoped to go further into the matter with you on the next day, but will try and see you again in Chicago when you find it convenient to be there if you will let me know. 2

"I am very pleased to make your acquaintance and trust we will become better acquainted in the future.

"With kind regards and trusting that you reached home safely, I am,

"Yours very truly,

"(Signed) E. L. Wayman."

Mr. NOBLE: Note the same objection to all of these letters. 3

Mr. GROSVENOR: I next offer the letter of June 7, 1910, addressed to Mr. Wayman and signed by the Western Supply Company per Mr. Sullwold, as "Petitioner's Exhibit No. 182."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 182" and reads as follows:

"June 7, 1910.

"Mr. Edwin L. Wayman,
Pittsburgh, Pa. 4

"Dear Sir:—

"As we purchase our small enameled ware principally from J. M. Kohler Sons Co., Sheboygan, Wis., we ask for for a written permission to continue to sell this commodity, so that we may continue to deal with this concern, whose goods we have illustrated

in our catalogues and enjoy the full rebates of the licensed jobbers agreement.

"Yours very truly,

"Western Supply Co.,

"Per J. L. Sullwold.

"dict. J.L.S."

Mr. GROSVENOR: I next offer the letter of June 10, addressed to the Western Supply Company and signed by E. L. Wayman, as "Petitioner's Exhibit No. 183."

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 183" and reads as follows:

"Edwin L. Wayman
Arrott Building
Pittsburgh

"W-6101008-R.
"June 10, 1910.

"The Western Supply Co.,
St. Paul, Minn.

Gentlemen:—

"Replying to your letter of the 7th, it is impossible for me to give you permission to continue buying goods from the J. M. Kohler Sons Co., Sheboygan, Wis. This Company has been invited to execute a license agreement and use the patented process, but has not seen fit to do so. I would like to have them execute an agreement, but if they will not it is impossible to concede to any of their customers the right to purchase their goods if the customers desire to purchase licensed ware.

"I hope that you will take the matter up with them and try and convince them that they should manufacture goods in accordance with the other Companies.

"Yours very truly,

"E. L. Wayman,

"Licensor.

"Received June 13, 1910.
The Western Supply Co."

Mr. GROSVENOR: The next letter I offer is dated July 11, and is addressed to E. L. Wayman and signed by the Western Supply Company. I offer that as "Petitioner's Exhibit No. 184." 1

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 184" and reads as follows:

"July 11, 1810.

"Mr. E. L. Wayman,
Pittsburgh, Pa.

"Dear Sir:—

"Yours of the 9th at hand and noted. I beg to state that the proposition outlined in your letter is an insult to any one of ordinary intelligence and our Company will now take the stand that we will use all honorable means to break up this illegal combination. 2

"We shall continue to use Kohler goods.

"Yours respectfully,

"Western Supply Co.,
"Per J. L. Sullwold

"dict. J.L.S."

Mr. GROSVENOR: The next letter is dated July 14, and is addressed to J. L. Sullwold and signed by E. L. Wayman. I offer that letter as "Petitioner's Exhibit No. 185." 3

The letter referred to was then marked and filed as "Petitioner's Exhibit No. 185" and reads as follows:

"Edwin L. Wayman
Arrott Building
Pittsburgh

"W-7141005-C

"July 14, 1910. 4

"Mr. J. L. Sullwold,
c/o Western Supply Co.,
St. Paul, Minn.

"Dear Sir:—

"This is to acknowledge receipt of your letter of the 11th inst., for which please accept my thanks.

"Yours very truly,

"E. L. Wayman."

1 Q. In one of the letters you referred to a catalogue of your products. Your company is in St. Paul, Minnesota?

A. Yes, sir.

Q. This catalogue represents, or gives an outline and description of the goods which you sell in outlying states?

A. Yes, sir.

Q. In Wisconsin? A. Yes, sir.

Q. And what other states?

A. Wisconsin, North and South Dakota, Iowa and Montana.

Q. Is it the custom for large jobbers like yourselves to
2 make catalogues showing the products which they have for sale? A. Yes, sir.

Mr. NOBLE: I object to that.

Q. Do they use these with their customers in making sales to them? A. Yes, sir.

Mr. NOBLE: Note the same objection.

Q. Do they advertise in these books the products of the manufacturers of sanitary enameled iron ware?

Mr. NOBLE: Note the same objection.

3

A. We advertise them, yes.

Q. In this catalogue which you have produced, being a volume of some 408 or 409 pages, are there pictures of many of the products of the 16 licensed manufacturers referred to in this case?

A. Quite a number of them, and so marked in the catalogue.

Mr. NOBLE: I note the same objection.

Q. Of which of the defendants are there the most articles represented?

4

Mr. NOBLE: Objected to as incompetent, irrelevant and immaterial.

A. The Standard Sanitary Manufacturing Company.

Q. How long have you used in the trade a catalogue of this description?

Mr. NOBLE: Note the same objection.

THE WITNESS: This catalogue?

Mr. GROSVENOR: No, a catalogue like this.

A. Oh, from 15 to 18 years.

Q. When did you get this one out?

A. Some three or four years ago.

Q. Now, can you obtain the products of the Standard Sanitary Manufacturing Company today? A. No, sir.

Q. You have not signed the license agreement?

A. No, sir.

Q. Are you obtaining the goods of any of those manufacturers, letters from whom I read in evidence, containing the sentence "It is necessary for you to sign these contracts in order to purchase licensed sanitary enameled iron ware from us"—are you purchasing from any of those companies today? A. No, sir.

Q. Are you, then, able to use this catalogue in your trade as far as it contains descriptions and figures and sketches of the articles produced by these manufacturers?

A. It makes the catalogue practically worthless, as there are so many goods photographed there that we cannot obtain.

Mr. NOBLE: I move to strike that out as incompetent, irrelevant and immaterial.

Mr. GROSVENOR: I offer this book in evidence as "Petitioner's Exhibit No. 186."

Catalogue referred to was then marked and filed as "Petitioner's Exhibit No. 186."

Mr. NOBLE: I object to that as incompetent, irrelevant and immaterial.

Mr. GROSVENOR: Counsel offers this book for the purpose of showing the effect upon the jobbing trade of this license agreement. It makes valueless these books which were gotten up at much expense.

Mr. NOBLE: Counsel moves that the book be stricken from the record and that the portion of the testimony contained in the statement of counsel for the Government as to making this book valueless also be stricken out.

CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Sullwold, you can buy sanitary enameled ware goods from other jobbers, can't you?

A. From other jobbers—

Mr. GROSVENOR: Yes, you are a jobber, aren't you?

A. Yes.

Q. And you can buy those goods from other jobbers?

A. Yes, sir.

Q. So if you wanted to buy from other jobbers, you could get those goods?

A. Yes, sir; but at the same price we would have to sell them at.

Q. You could buy from other jobbers, however?

A. I think we could.

A. As I recall you say that for a number of years you have built up a large trade in the goods handled by your company? A. Yes, sir.

Q. Do you recall a letter containing a statement to that effect? A. Yes, sir.

Q. And that is true, is it not? A. Yes, sir.

Q. You buy your goods from the Kohler Company, do you not?

A. We buy small ware from the Kohler Company and the bathtubs we have been buying from the Standard Sanitary Company.

Q. And you could buy those bathtubs which you formerly bought from other jobbers if you want to now?

A. Yes, sir.

Q. Are you still engaged in the jobbing business?

A. Yes, sir.

Q. And selling your goods throughout the states which you named? A. Yes, sir.

Q. Have you any branch stores? A. No, sir.

Q. You sell them from your main store in St. Paul, do you not? A. Yes, sir.

Q. By salesmen who go throughout the country to sell your goods? A. Yes, sir.

Q. You are obtaining a supply of sanitary enameled iron ware for your customers, are you not? A. Yes, sir.

Q. Sufficiently to supply your needs?

A. Yes, sir, except those goods contained in this catalogue (indicating) which are sold by the licensed manufacturers.

Q. But you could buy those goods from other jobbers?

A. We could buy them from other jobbers, I suppose.

Q. In your letter of July 13, written by you to Mr. [illegible] you said you were still suffering from the strenuous day which you all had had in Chicago? A. No, sir.

Q. Which you referred to there? A. No, sir. 1

Mr. GROSVENOR: I thought Mr. Ahrens said that he had a strenuous day.

Q. Well, did you have a strenuous day on that occasion?

A. Not very.

Q. Not more strenuous than you desired it to be?

A. No, sir.

Q. The letters which you addressed to Mr. Ahrens on July 13 and July 18 expressed your opinion on the subject matters upon which you wrote, did they not? A. Yes, sir.

Q. Those were your individual views? A. Yes, sir. 2

Q. You did not there intend to speak for any other jobbers or for manufacturers of sanitary enameled iron ware?

A. No, sir.

Q. Those were your personal views?

A. Those were my personal views; yes, sir.

Q. Is the same true of the correspondence which passed between you and Mr. Torrance? A. Yes, sir.

Q. You and Mr. Ahrens and Mr. Torrance had been friends for a number of years?

A. Yes, sir; for twenty years.

Q. And those were the views which you two friends expressed to each other candidly, is that correct? A. Yes, sir. 3

Q. Is the same true of the correspondence introduced between you and the Union Sanitary Manufacturing Company and the Cahill Iron Works and the McCrum-Howell Company?

A. I am not acquainted with any of the members of the firm of the Cahill Iron Works.

Q. But of McCrum-Howell and of the Union Sanitary Manufacturing Company; that is true, is it not?

A. I don't know those in the McCrum-Howell Company.

Q. But as to the others, the same is true? A. Yes, sir.

Q. Is the same true as to the letters between you and the Wolff Company? 4

A. I don't think there is any letter there from them.

Q. It is not true as to the Cahill Company. You know Mr. Caldwell, do you not?

A. Possibly I have met Mr. Caldwell.

Q. There were some communications between you and Mr. Wayman introduced here as exhibits, where you ex-

1 pressed your personal views also, did you not? A. Yes, sir.

Q. And as I recall it there was a letter in which you said you would do all that you could to break up this so-called combination or whatever language you used?

A. That letter is there.

Q. Have you done what you could?

A. I have done what the Government has asked me to do.

Q. Had they asked you for anything at the time you wrote that letter? A. No, sir.

2 RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Sullwold, Mr. Noble asked you about whether you could buy these goods from jobbers which you cannot buy from the manufacturers? A. No, sir.

Q. You are a jobber? A. Yes, sir.

Q. You sell the plumbers? A. Yes, sir.

Q. If you buy from a jobber, what price do you pay?

Mr. NOBLE: Objected to as irrelevant, incompetent and immaterial. There are no specific illustrations.

Mr. GROSVENOR: I am only bringing out the facts.

3 Mr. NOBLE: He has said that he has not tried to buy but he thinks he can. Those cases seem to be immaterial, and I object for those reasons.

Mr. GROSVENOR: Read the question.

The stenographer then read the question.

Mr. NOBLE: I would like to say that I hope the Government will confine the testimony to the witness' knowledge.

Mr. GROSVENOR: He said that he could buy from jobbers, but I want to bring out that he buys as a plumber and not as a jobber.

4 THE WITNESS: The same price that they sell at to the plumber.

Mr. GROSVENOR: Of course, we know that because the contracts that were introduced in evidence so specified.

RE-CROSS EXAMINATION BY Mr. NOBLE:

Q. Have you ever bought any of the manufacturers' goods of the licensed manufacturers from jobbers?

A. Yes, sir.

Q. Since June 1, 1910? A. Yes, sir. 1

Q. What price did you pay for those goods?

A. I paid the same price that those jobbers sell to the plumbers.

Q. What prices did you pay and from what jobbers did you buy them?

A. From Crane and Ardway Company, St. Paul, and from the Central Supply Company of Minneapolis.

Q. For what purpose did you buy those goods?

A. To fill orders; people came in and bought goods and we filled the orders.

Q. Do you remember telling Mr. Wayman that you got better prices for your goods previous to these licenses than you do now? A. I did not say that. 2

Q. What did you say?

A. I said that in the City of St. Paul we enjoyed a better profit without the license agreement than we would with it.

Q. Was there a combination among the jobbers in St. Paul as to prices on goods? A. No, sir.

Q. Or an understanding?

Mr. GROSVENOR: I object to this line of questioning.

A. No, sir. 3

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

HENRY EDWIN BULLOCK, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Bullock, what is your business?

A. President of the Illinois Malleable Iron Company. 4

Q. With offices where?

A. 1801 De Versey Boulevard, Chicago.

Q. What is their business?

A. Manufacturers and jobbers.

Q. Of what?

A. Plumbers and steamfitter supplies.

Q. Are they jobbers of bathtubs made of sanitary enameled iron ware? A. Yes, sir.

1 Q. And lavatories? A. Yes, sir.

Q. And the general articles manufactured and sold by the manufacturers of sanitary enameled iron ware?

A. Yes, sir.

Q. Where are your customers located, in what states?

A. The customers for the enameled ware are in the states of Indiana, Michigan, Illinois, Iowa and Wisconsin.

Q. You receive orders from these customers and then send the orders to the manufacturers for shipment to the customers?

A. Sometimes, but mostly ship from stock.

2 Q. You also keep stock in Chicago and fill orders for customers in those states by sending your stock to them?

A. Yes, sir.

Q. You do business in both ways? A. Yes, sir.

Q. You appear here under subpœna of the Government?

A. Yes, sir.

Q. Have you signed a license agreement?

A. I have not.

Q. You were subpœnaed to produce certain papers; have you them with you?

A. They are attached to that paper which you hold in your hand—I beg your pardon, these are the papers (indicating).

3

Mr. GROSVENOR: I offer in evidence a letter produced by the witness and addressed to the Illinois Malleable Iron Company, and dated August 10. 1910, and signed by the Cahill Company, as "Petitioner's Exhibit 187."

Q. Did your company receive that letter?

A. Yes, sir.

Q. Was the pencil notation made in your office that is on there? A. Yes, sir.

4

Mr. GROSVENOR: I offer that letter without the pencil notation.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 187."

Mr. NOBLE: I offer the same objection to the receipt of these letters as was heretofore noted.

Mr. GROSVENOR: I offer the letter dated May 31, 1910, and addressed to the Illinois Malleable Iron Company and signed by the United States Sanitary

Manufacturing Company, A. H. Cline, Jr., Secretary, as "Petitioner's Exhibit No. 188." 1

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 188."

Mr. GROSVENOR: I offer the letter dated June 7th and signed by the Union Sanitary Manufacturing Company, and addressed to your company as "Petitioner's Exhibit No. 189."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 189."

Mr. GROSVENOR: I offer as "Petitioner's Exhibit No. 190," the letter of June 11th, 1910, addressed to the Illinois Malleable Iron Company and signed by the United States Sanitary Manufacturing Company, A. H. Cline, Jr., Secretary. 2

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 190."

Mr. GROSVENOR: I offer the letter dated August 25th, 1910, addressed to the Illinois Malleable Iron Company and signed by the National Sanitary Manufacturing Company as "Petitioner's Exhibit No. 191."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 191." 3

Mr. GROSVENOR: I think, that you do not object to the introduction of these letters in this manner?

Mr. NOBLE: No.

Q. These are all letters received from the companies in response to the several letters which you have produced?

A. Yes.

Mr. GROSVENOR: I offer the letter of May 20th, 1910, addressed to the Illinois Malleable Iron Company, and signed by the United States Sanitary Manufacturing Company, per A. H. Cline, Jr., Secretary, as "Petitioner's Exhibit No. 192." 4

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 192."

BY MR. GROSVENOR:

Q. Have you ever had any conversation with Mr. Torrance and Mr. Ahrens with regard to signing this license agreement? A. No.

CROSS EXAMINATION BY MR. NOBLE:

Q. You ship your goods into various states, I understood you to say? A. Yes.

Q. How long have you been in business, that is, your Company?

A. This Company, since 1904 only, because our other charter ran out then and we had to make out a new charter.

Q. Are you still engaged in the sale of enameled iron ware? A. Yes.

Q. You sell it now? A. Yes.

Q. Where do you sell it now? A. The same states.

Q. Whose goods do you sell now?

A. Sell some of Kohler's and some of the Iron City, and we sell some of the other goods that we had in stock or coming at the time of the—

Q. (Interrupting): At the time of the agreements, you mean? A. Yes, we had a large stock of goods on hand.

Q. Are you getting goods enough to supply your needs at the present time?

A. No, not enough to supply our needs, but there is less objection because we get less orders for the goods of the manufacturers whose lines we do not handle. Our salesmen know that we cannot get those goods, and so they don't take orders for them.

Q. But the orders that you do get you are able to supply?

A. Yes, and occasionally we have to cancel if we have run out of those goods, because we can't get any more of them.

Q. In the past you also had to cancel orders for goods that you could not get?

A. Only because people would get tired waiting, but the manufacturers were willing to sell us then.

Q. You buy your goods now chiefly from whom?

A. From the Kohler Manufacturing Company and some from the Iron City.

Q. And both of them make full lines of sanitary enameled iron ware? A. Oh, no.

Q. Well, they so testified here?

A. They may make full lines, but they do not make all the other patterns that the other people do.

Q. They make all the things commonly used? 1

A. They make all the lengths of bathtubs.

Q. Of course, each company has its own design?

A. Yes, and there are some things, I believe, that the Iron City have not all the patterns of their own for lots of goods, and I don't think Kohler has a full line even aside from not having the designs of the others.

Q. I understood him to testify this morning that they had?

A. Well, he knows better than I do. What I mean was that there were some types of goods that we can't get.

Q. That is, some shapes? 2

A. Yes, and what we can't get from one, we can sometimes get from another, but we have to cancel more or less orders still.

Q. Can you buy the type of goods manufactured that have been referred to here as the goods of licensed manufacturers from other jobbers?

A. At resale or retail prices, which their contracts allow, I think.

Q. Have you bought any goods from other jobbers?

A. I think we have.

Q. And had no difficulty in getting the goods?

A. Yes we had difficulty in getting the goods. 3

Q. They sold the goods to you?

A. Yes, but I understand the manufacturers, if they knew it, would make trouble, and it has to be done in an underhand way.

Q. Did the manufacturers tell you that?

A. The Standard Sanitary Manufacturing Company won't sell us at all, but I think one manufacturer will, from a letter which we had.

Q. Do I understand that they cannot sell to jobbers?

A. Well, I understand that they could sell to jobbers, but not to jobbers who have not signed the agreement. 4

Q. I ask you whether any licensed manufacturer has told you or any officer of your Company that you could not buy these goods from licensed jobbers?

A. No manufacturer has told me that.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

1 JAMES K. GILMORE, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Mr. Gilmore, what is your business?

A. Jobber of steam fitting and plumbing goods.

Q. What company are you connected with?

A. The D. M. Gilmore Company.

Q. Where are you located? A. Minneapolis.

Q. You are jobbers of sanitary enameled iron ware such
2 as bathtubs, lavatories and sinks? A. Yes, sir.

Q. You sell to the plumbers? A. Yes, sir.

Q. Where are your customers located?

A. Minnesota, North and South Dakota, parts of Wisconsin and parts of Iowa, and we go to Montana somewhat—that is, any place we can sell out there.

Q. But your customers are situated largely outside of the state of Minnesota? A. Yes, and Minneapolis.

Q. Do you receive these orders and fill them from your stock? A. Yes, sir.

Q. Do you also send your orders to the manufacturers
3 for shipment?

A. No, we ship direct from our own stock unless it is a carload shipment.

Q. And if it is a carload shipment?

A. Then we send it to the factory.

Q. And they ship from there? A. Yes, sir.

Q. You have been subpœnaed to produce certain papers here; have you done so? A. Yes.

MR. GROSVENOR: I offer in evidence the letter of June 24, 1910, as "Petitioner's Exhibit No. 193." That letter is on the letterhead of McCrum-Howell
4 Company and is signed by Mr. S. O. Dugger.

Q. Who is Mr. Dugger?

A. I think he is the Chicago sales agent of the McCrum-Howell Company; he represents them here.

MR. NOBLE: Note the same objections as heretofore noted.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 193."

Mr. GROSVENOR: Here is a telegram which you have produced and which is addressed to the McCrum-Howell Company, New York City, and which is signed by your Company and dated July 28, 1910. I offer that telegram as "Petitioner's Exhibit No. 194." 1

Telegram referred to was marked and filed as "Petitioner's Exhibit No. 194."

Mr. GROSVENOR: That telegram reads:

"Minneapolis, Minn., July 28, 1910.

McCrum-Howell Co.,
New York City. 2

Can you ship fifty Plate E six seventy immediately old price. Wire answer.

The D. M. Gilmore Co."

Q. Did you receive a reply to that? A. Yes, sir.

Q. Is this the letter (indicating)?

A. There are several there; this is one, the one dated July 28, 1910.

Mr. GROSVENOR: I offer this in evidence, it being a letter on the letterhead of the McCrum-Howell Company, dated July 28, 1910, and addressed to the D. M. Gilmore Company, as "Petitioner's Exhibit No. 195." 3

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 195."

Q. Who were Eichel and Company?

A. Agents for the National Sanitary Manufacturing Company, I understand.

Q. At Richmond, Virginia? A. Yes.

Mr. GROSVENOR: I offer in evidence the letter of Eichel and Company, selling agents for the National Sanitary Manufacturing Company, which is dated July 8th, and is addressed to the D. M. Gilmore Company, as "Petitioner's Exhibit No. 196." 4

Mr. NOBLE: I object to the letter of July 8th, which is offered as Petitioner's Exhibit No. 196, on the ground that it appears to be some correspondence between a firm in Richmond, Virginia, and the

1 Gilmore Company of Minneapolis, and is not signed by any officer or person connected with any one of the licensed manufacturers.

Q. Have you had dealings before with Eichel and Company? A. I think not.

Q. Had you ever sent any orders to them?

A. I think not.

Q. How did you happen to write to them?

A. We had been doing business with two other concerns, and when this license agreement went into effect, we tried to find somebody else. We first went to the 2 National Sanitary Manufacturing Company and we presumed that Eichel and Company were a separate institution, but we afterwards found out they were not.

Q. In response to a letter of Eichel and Company you received this letter on their letterhead which has been marked as Petitioner's Exhibit No. 196? A. Yes, sir.

Mr. GROSVENOR: I offer in now the letter dated August 8th, 1910, on the letterhead of the Cahill Iron Works and addressed to your Company, as "Petitioner's Exhibit No. 197."

3 Letter referred to was then marked and filed as "Petitioner's Exhibit No. 197."

Mr. GROSVENOR: I now offer the letter dated August 15th, from the Cahill Iron Works and signed by them and addressed to the D. M. Gilmore Company, as "Petitioner's Exhibit No. 198."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 198."

Q. I show you a copy of a circular dated August 13th, 1910, and signed by E. L. Wayman and ask you if you received that? A. Yes.

4 Q. Have you ever signed the license agreement?

A. No, sir.

Q. Did you have any trouble buying enameled ware—

A. Yes, sir.

Q. Since the first of June?

A. Yes, sir; all the trouble of my life.

Q. Supposing you tell us about it? A. It is a long story.

Q. When did it begin? A. When this began.

Q. In June? A. Yes, in June, June 1st.

Q. What manufacturers refused to sell to you? 1

A. People whose goods I was handling; I have only been in the plumbing business about a year.

Q. Whose goods did you handle?

A. McCrum-Howell's and the Cahill Iron Works.

Q. Well, what happened in June?

A. They wanted me to sign one of these agreements.

Q. And you refused? A. Yes, sir.

Q. Did both of them want you to sign it?

A. Yes, sir; everybody I attempted to buy goods from

Q. Did you refuse to sign it? A. Yes, sir.

Q. Could you get goods then? A. No, sir. 2

Q. Whose goods are you handling today?

A. The Iron City's, when I can get them.

Q. Where are they located?

A. At Pittsburg, just outside or around there.

Q. Did these companies who refused to sell you say that they would sell if you would sign the agreement?

A. Yes, sir.

Q. Are you able to get their goods today? A. No, sir.

Q. Can you get them from jobbers?

A. Yes, sir; at resale prices.

Q. At the resale price fixed in the price list? 3

A. Yes, sir; which is higher in our territory than the resale price.

Q. Explain that?

A. Well, the licensed jobbers are not living up to their agreement in this territory.

Q. Are they quoting higher prices?

A. No, they are quoting lower, but they quote us the resale prices.

Q. And you are compelled to sell at lower than that price?

A. Yes, sir; but we don't do business that way, but if we get an order we attempt to fill it. 4

Q. Who is Mr. Sam O. Dugger?

A. He is the Chicago representative of the McCrum-Howell Company.

Q. I show you a telegram dated August 23rd, addressed to your firm; do you recall receiving that (indicating the telegram)? A. Yes, sir.

Mr. GROSVENOR: I offer that in evidence. It is

1 signed "S. O. Dugger," as "Petitioner's Exhibit No. 199."

Telegram referred to was then marked and filed as "Petitioner's Exhibit No. 199."

Mr. NOBLE: I object to that on the ground that there is nothing to show that he is connected with any of the defendants.

THE WITNESS: My business has been conducted with Mr. Dugger altogether; I have had nothing to do with McCrum-Howell direct.

Q. And he represents them here in Chicago?

2 A. Yes, sir.

Q. Where are his offices? A. On Dearborn Street.

Q. And he has taken orders from you for McCrum-Howell? A. Yes.

Q. And they were shipped?

A. Yes, sir; before this agreement went into effect.

Mr. GROSVENOR: I will read that telegram:

"Kansas City, Mo., August 23, 1910.

D. M. Gilmore Co.,
Mpls.

3 New York wires me they cannot ship tubs unless you sign agreement. I advise your doing so at once, I will be in Chicago Saturday, hope to see you next week.

S. O. Dugger."

Q. Does Mr. Kohler's Company do a large business in St. Paul? A. Yes, sir.

Q. You have stated that the jobbers up there are not living up to the resale prices? A. Yes, sir.

Q. Is that because they are meeting with competition from Kohler's goods? A. No, sir.

4

Mr. NOBLE: I object to the question and to the witness giving the answer as to the alleged statement that the jobbers are not living up to the resale price.

Q. Is it just competition between the jobbers?

A. I don't know how to answer that.

Q. I show you a letter from the McCrum-Howell Company, Chicago, and signed by S. O. Dugger. It is dated August 26th, 1910. Did you receive that letter? A. Yes.

Mr. GROSVENOR: I offer that letter as "Petitioner's Exhibit No. 200." 1

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 200."

Q. (Reading):

"Chicago, 8/26/10.

D. M. Gilmore Co.,
Minneapolis, Minn.

Gentlemen:

The writer has just returned to the City this morning. 2

"As I wired you from Kansas City, I received a telegram from the home office notifying me that you had asked them to ship some tubs and that it was absolutely necessary for you to sign the Enameled Ware Contract before they could do so. In my telegram to you I advised your signing it at once.

"Upon my return to the office I found a letter from our Secretary in which he states that Mr. Wayman was sending a letter to the jobbers in your territory who had signed their contracts. He has stated to them that they are at liberty to quote from 10 to 12½% below the resale price in 3 the district affected by the Western Plumbing Supply Co." Is that the Company of which Mr. Sullwold is President?

A. Yes, the Western Supply Company is the Company.

Q. Do you know of any other Western Supply or Western Plumbing Supply Company? A. No, sir.

Q. Where is the Western Supply Company located?

A. It is in St. Paul.

Q. (Continuing): "You can see from this that it is Mr. Wayman's intention to protect the jobbers who have signed the agreement against the cut prices being made by certain jobbers who are not co-operating in the resale price. 4

"As I stated to you on two or three different occasions, we certainly want to do business with you and I want you to sign up the agreement so you will receive the benefits of any action taken by Mr. Wayman in matters of this character.

"I trust that you have signed this agreement and sent it in without delay. Also that you have favored us with this order.

[illegible] and trying very hard to get up to see you the last part of the coming week.

"Yours very truly,

"S. O. Dugger.

[illegible] this letter as strictly confidential [illegible] whether or not I am at liberty to give you the information.

Mr. [illegible] (interrupting): I object to that question on the same grounds as heretofore stated and move that it be stricken out.

[illegible]

Q. (By Mr. [illegible]) You have said that all your dealings with the [illegible] Company were with S. O. Dugger?

A. [illegible] of payments.

Q. They always went to him? A. Yes, sir.

Q. And they were filled? A. Yes, sir.

Q. That is previous to June 1st, 1910? A. Yes.

Mr. [illegible]: I offer another letter dated [illegible] to the D. M. Gilmore Company, [illegible], and signed by S. O. Dugger, as "Defendant's Exhibit No. 201."

[illegible] was then marked and filed as "Defendant's Exhibit No. 201."

Mr. [illegible]: That letter reads as follows:

"Chicago 8/12/10.

"The D. M. Gilmore Co.,

[illegible] Minn.

"Gentlemen:

"Since writing you I have been in correspondence with the factory and have a letter from them dated [illegible] stating that the back orders they have on hand [illegible] on account of the following:

[illegible] guaranteed Tubs

[illegible]

[illegible]

[illegible]

"These they say they will be very glad to ship to you at the prices at which the orders were placed as a local shipment allowing the regular freight. 1

"I trust that you will make up your mind to sign the agreement and send me additional specifications at the prices in effect today to make up a car for shipment. We have talked this matter over so many times, that there is really nothing more that I can say just at this time. As it is, as I see it, a matter that you will have to settle in your own minds as to just what you want to do.

"With very kind regards, and hoping to hear from you soon, I am 2

"Yours very truly,

"S. O. Dugger."

Q. This (indicating) is your letter in response to that one, dated 9/16/10, and I will offer that in evidence as "Petitioner's Exhibit No. 202."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 202."

Mr. GROSVENOR: Then on 9/19/10, there is a letter signed by S. O. Dugger on the letterhead of the McCrum-Howell Company and addressed to you which I offer as "Petitioner's Exhibit No. 203." 3

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 203."

Mr. GROSVENOR: I offer next the letter on the letterhead of the Union Sanitary Manufacturing Company, dated June 6, 1910, and addressed to the D. M. Gilmore Company, containing this sentence: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware." That letter is offered as "Petitioner's Exhibit No. 204." 4

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 204."

Mr. GROSVENOR: And the next is a letter from the Wheeling Enameled Iron Company, dated June 6th, 1910, and addressed to you. I offer that as "Petitioner's Exhibit No. 205."

1 Letter referred to was then marked and filed as "Petitioner's Exhibit No. 205."

Mr. GROSVENOR: That contains this sentence: "It is necessary for you to sign these contracts before we can sell you licensed sanitary enameled ware." I next offer a letter from the Cahill Iron Works, dated June 1st, and addressed to you, stating: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware." I offer that letter as "Petitioner's Exhibit No. 206."

Letter referred to was then marked and filed as
2 "Petitioner's Exhibit No. 206."

CROSS EXAMINATION BY Mr. NOBLE:

Q. Do you buy Kohler's goods, Mr. Gilmore?

A. No, sir.

Q. Did you ever try to buy them? A. No, sir.

Q. Why don't you buy them?

A. Because they are tied in Minneapolis with the Crane Company.

Q. You mean the Crane Company have the exclusive right to sell the Kohler goods in that city? A. Yes, sir.

3 Q. Do you purchase the Rundel Company's goods?

A. No, sir—I think we have used a few cheap sinks.

Q. Have you tried to?

A. Yes, sir; we have talked to them, but they were filled up.

Q. They were so full of orders that they could not take your orders? A. Yes, sir.

Q. Previous to June 1st, 1910, have you ever attempted to buy goods from the Iron City Company?

A. No, sir—yes, I believe we had written them when we first started in business.

4 Q. And they would not sell you goods?

A. Yes, but they quoted us.

Q. And you did not buy goods from them? A. No, sir.

RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. You produced certain contracts being jobber's license agreements similar to Government's Exhibit No. 11, not executed by you, upon which the names of the following companies appear: the McCrum-Howell Company, the

Wheeling Enameled Iron Company, National Sanitary Manufacturing Company; Union Sanitary Manufacturing Company; Cahill Iron Works. Those contracts accompanied the several letters which have been offered in evidence and which contain the statement that it would be necessary for you to sign these contracts in order to obtain licensed sanitary enameled ware? A. Yes, sir. 1

RE-CROSS EXAMINATION BY MR. NOBLE:

Q. Can't you buy Kohler goods for sale outside of Minneapolis? A. No, sir.

Q. Why not? 2

A. Because the Kohler people don't want to sell me.

Q. Why not? A. Because they are tied up, I suppose.

Q. In that territory, you mean? A. Yes, sir.

Q. Have you tried to get goods from the Kohler Company? A. Yes, sir.

Q. And is that the reason they have assigned?

A. Yes, sir.

Q. You buy your goods from the Iron City Company?

A. Yes.

Q. And that is a large manufacturing concern, is it not?

A. I understand so, yes, sir. 3

Q. They manufacture substantially a full line of sanitary enameled iron ware? A. I think so, yes, sir.

Q. They manufacture all the types that you have tried to procure, don't they? A. No, not exactly.

Q. I should not have said types; they manufacture all the articles you have tried to secure? A. Not exactly.

Q. As distinguished from designs?

A. Yes, as distinguished from designs.

Q. You say that you can buy goods from these jobbers in your territory at something off the resale prices now?

A. No, sir. 4

Q. Well, have you tried to buy them?

A. We have occasionally, but of course, we don't like to buy any more goods from our competitors than is necessary, but where we have done so it was at resale prices.

Q. You said they were violating their resale agreement?

A. Yes, sir.

Q. Since that time, have you tried to buy any licensed goods from the jobbers?

A. Yes, sir; we have placed orders with them.
Q. And they have supplied you with those goods?
A. Yes, sir.

Mr. NOBLE: That is all.

RE-RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. In the sanitary enameled ware business some articles have particular names, like this five-year-guaranteed bathtub named Trimo; some manufacturers would carry that with different names? A. Yes, sir.

Q. And then there would be a demand for it as it was named? A. Yes, sir.

Q. And all the manufacturers would manufacture that same bathtub under a different name? A. Yes, sir.

Q. And they would have a special demand for that kind?
A. Yes, sir.

Q. When you say that one company manufactures practically all lines, you mean they manufacture all the articles under the standard? A. Yes.

Q. But the customer may sometimes want the bathtub with a particular name, is that right? A. Yes, sir.

Q. And that kind of bathtub you cannot sell him because you did not sign the license agreement?

Mr. NOBLE: I object to that question as leading and there is no such testimony as that?

A. Yes, sir.

Mr. NOBLE: The witness has testified that he can get those goods from jobbers?

Q. If you get them from the jobbers, however, you buy at what price? A. The resale price.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

CHARLES H. CHANDLER, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows. 1

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Mr. Chandler, what is your business?

A. Jobbing, plumbing and heating goods.

Q. What company are you connected with?

A. The Chandler Company.

Q. What place? A. Cedar Rapids, Iowa.

Q. Is your Company jobbers of sanitary enameled iron ware, such as bathtubs, lavatories and sinks? 2

A. Yes, sir; a full line.

Q. Do you sell to plumbers? A. Yes.

Q. The plumber is the man who puts the bathtub in the house? A. Yes.

Q. Are any of your customers situated outside of the State of Iowa? A. Yes.

Q. What States? A. South Dakota, Minnesota, Wisconsin and a very little in Kansas and Missouri.

Q. Kansas and Missouri?

A. Yes, a very little in Kansas and Missouri.

Q. You receive orders from these customers and then ship them goods from your stock in Cedar Rapids? A. Yes. 3

Q. You sometimes have the goods shipped direct to them from the factory? A. Yes, we have done that.

Q. But, mostly you ship from your own stock?

A. Yes, we have orders from architects for goods different from what we sell, say from the United States Manufacturing Company or Standard Sanitary Manufacturing Company, which, in those cases, we order the goods shipped direct.

Q. From the factory? A. From the factory, yes.

Q. Did you have any trouble after June 1st, in getting goods? 4

A. No, we have been confining our purchases to the Kohler people.

Q. Before that did you buy any goods from the defendants in this case?

A. We bought all of our stuff practically from the United States Sanitary Manufacturing Company.

Q. Before June 1st? A. Yes, practically all of them.

1 Q. Have you discontinued using them? A. Yes.

Q. Did they refuse to sell them to you? A. Yes.

Q. Did they offer to sell them if you would sign a contract? A. Yes.

Q. Was the contract similar to Government's Exhibit No. 11. A. Practically the same thing, I think.

Q. And did you decline? A. I did.

Q. Were you handling any of the goods of these other manufacturers?

A. Some of the Standard Company's. We have bought a great many goods of theirs.

2 Q. Are you handling any of their goods now? A. No.

Q. Did they send you a contract? A. Yes.

Q. And ask you to sign it? A. Yes.

Q. Did you decline to do so? A. Yes.

Q. Did you send any orders in after that?

THE WITNESS: To the United States people?

Mr. GROSVENOR: Yes, to be filled.

A. No, they were refused and the letter of refusal is here.

Q. Did you send any orders to the Standard Sanitary
3 Manufacturing Company? A. No.

Q. You did not send any to the Standard?

A. No, only to the United States.

Q. Will you look at the Petition on page 71 and state whether you recall receiving a letter about that date from Mr. E. L. Wayman, of which that is a copy?

A. Yes, I have that letter with me.

Q. You have been subpœnaed to appear in this case?

A. Yes.

Q. And to produce certain correspondence? A. Yes.

Q. Have you those papers with you?

A. All but the telegram which is a reply.

4 Q. You produce a letter dated May 31, from the United States Sanitary Manufacturing Company, containing this sentence among the others: "It is necessary for you to execute this contract before we can sell you licensed sanitary enameled ware." The contract attached came with it?

A. Not with that letter; this is from the Union Sanitary.

Q. Did this one come? A. Yes, sir.

Q. That is similar to Government's Exhibit No. 11.

A. Yes.

Q. You have also handed me a letter to you from the Standard Sanitary Manufacturing Company, containing this sentence: "It is necessary for you to sign this contract before we can sell you any licensed sanitary enameled ware." Is there attached to that letter a contract similar to Government's Exhibit No. 11?

A. Yes, sir; to all of these letters.

Mr. GROSVENOR: That letter of Mr. Wayman's which the witness has identified as being on page 71 of the Petition, I will offer in evidence as "Petitioner's Exhibit No. 207."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 207."

Mr. GROSVENOR: Here is a letter dated May 24, addressed to your Company and signed by the United States Sanitary Manufacturing Company, by A. H. Cline, Jr. I offer that letter as "Petitioner's Exhibit No. 208."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 208."

No Cross Examination.

Examination concluded and signing of signature waived by agreement of counsel for the respective parties.

OSCAR A. KROOS, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Kroos, you are connected with the J. M. Kohler Sons Company? A. Yes, sir.

Q. What is your position. A. Secretary.

Q. How long have you been with them?

A. About eleven years.

Q. What department? A. In the office department.

Q. You had the oversight or supervision of orders?

A. Yes, sir; shipments and sales.

Q. You are advised of the prices before the goods are sold? A. Yes, sir.

1 Q. And the discounts which you make to jobbers?
A. Yes, sir.
Q. And the prices at which they have been sold during the last three or four years? A. Yes, sir.

Examination Suspended.

Adjourned.

IN THE CIRCUIT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF MARYLAND.

2 THE UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

3 Post Office Building,
New York, N. Y., November 23, 1910.

Pursuant to notice, the taking of evidence for the Petitioner was resumed in the Post Office Building, in New York, N. Y., on the twenty-third day of November, 1910, at 10.30 A. M.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General, for the Complainant.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq., on behalf of the De-
4 fendants.

CHARLES S. HIRSCHFELD, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Hirschfeld, what is your business?
A. Jobbing of plumbing supplies.
Q. Where is your office? A. 252 Pearl Street.

Q. New York City? A. New York City. 1

Q. Do you direct the business of your Company?

A. I do; I am half owner.

Q. And by plumbing supplies you mean such things as sanitary enameled iron ware goods, that is, bathtubs, and lavatories and sinks? A. I do.

Q. You buy your goods, then, from the manufacturers, and sell them to the plumbers? A. We do.

Q. State the name of your firm?

A. The Central Plumbers Supply Company.

Q. Are your customers located in other cities than New York? A. They are. 2

Q. State where?

A. New Jersey, Connecticut, Massachusetts and Vermont.

Q. In filling the orders of your customers, you ship to them from your stock in New York City?

A. Sometimes from the stock and at times from the various factories.

Q. You mean from the factories of the manufacturers?

A. From the factories of the manufacturers; yes.

Q. Well, will you state with what manufacturers you did business prior to June 1, 1910? 3

A. The Standard Sanitary Manufacturing Company of Pittsburg; the United States Sanitary Manufacturing Company of Monaca, Pennsylvania; the Barnes Manufacturing Company of Mansfield, Ohio; the Humphryes Manufacturing Company of Mansfield, Ohio; the Cahill Iron Works of Chattanooga, Tennessee; Weiskittel Sons & Company, Baltimore, Maryland.

Q. In the course of business you sent orders to these various manufacturers for goods which were then shipped to you in New York City?

A. We had them shipped to our stock in New York City and to the various customers as the occasion presented itself. Sometimes it was necessary to ship to the customers at their places of business. 4

Q. That is, some orders were shipped from your stock?

A. Yes, sir.

Q. And some direct to the customer by the manufacturer? A. Yes.

Q. To your customers in these various states?

A. Yes, sir.

1 Q. As previously stated?

A. Yes, sir; as previously stated.

Q. Since June 1st, 1910, have you bought any goods from the Standard Sanitary Manufacturing Company?

A. We attempted to buy goods—

Mr. NOBLE: I object to that; that is not the question.

Q. Have you bought any goods from the Standard Sanitary Manufacturing Company since June 1st, 1910?

A. We have not.

2 Q. Have you sent orders to the Standard Sanitary Manufacturing Company since then?

THE WITNESS: I would like to have that other question read again to me.

The stenographer then read the next to the last question.

THE WITNESS: We have.

Q. Well, were those on orders sent to the Standard Sanitary Manufacturing Company prior to June 1st, 1910?

Mr. NOBLE: Objected to as leading.

3 A. Some of them were.

Q. You have been subpœnaed to produce certain papers, Mr. Hirschfeld, have you them here? A. I have.

Mr. GROSVENOR: Will you let me see the subpœna and the papers which you have produced?

The witness then handed the subpœna and the papers referred to to counsel for the Government.

Q. I show you a letter on the letterhead of the Standard Sanitary Manufacturing Company, dated June 10, 1910, which you have produced under subpœna, and which is ad-
4 dressed to the Central Plumbers Supply Company, of New York, and I ask you if that is a letter which was received by you from that Company? A. It is.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 210."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 210."

Mr. GOSVENOR: I will read that letter. (Reading):

"Pittsburgh, U. S. A., 6/10/10. 1

"Central Plumbers Supply Company,
New York, N. Y.

"Gentlemen:—

"We are in receipt of your valued order #23753 specifying a number of Plate P-601 sectional lavatories. In view of the fact that the sheets covering re-sale prices applying to our sectional lavatories has not been issued, we will arrange to enter your order and invoice at previous prices, provided you have signed the jobber's license agreement whereby 2
you would be entitled to receive licensed sanitary enameled ware.

"Yours very truly,
"STANDARD SANITARY MFG. CO.,
"H. J. C. Heckman,
"HJCH Mgr. Quotation Department."

Q. Have you produced order #23753 which is referred to here? A. Yes, sir; this is it (indicating).

Q. Now, Mr. Hirschfeld, this order #23753 was, as this letter states for sectional lavatories; where was the customer located? A. Mt. Vernon, New York. 3

Q. What is the name of the Company?

A. The Westchester Lighting Company.

Q. With what officer or person did you have your dealings?

Objected to as immaterial.

A. We had dealings with Mr. Gates, the superintendent of the Westchester Lighting Company, and also Mr. Hodge of Hodge Brothers, who were the contractors for installing these fixtures.

Q. You mean by contractors, the plumbers? A. Yes, sir. 4

Q. Your firm is a jobbing firm? A. Yes, sir; it is.

Q. Your name appears in this book, known as Petitioner's Exhibit No. 30 (indicating)? A. It does.

Q. And Hodge Brothers are plumbers? A. They are.

Q. What was this building in which these were to be installed?

A. The Westchester Lighting Company's comfort stations.

1 Q. For the public? A. Yes, for the public.

Q. How did you come to send the Standard Sanitary Manufacturing Company an order for these goods which were to be installed in this building in Mt. Vernon?

A. We agreed to furnish Standard Sanitary Manufacturing Company's lavatories to be used in the Westchester Lighting Company's public toilets.

Q. What date was that? A. June 8th, 1910.

Q. You then accepted the order of Hodge Brothers?

Objected to as immaterial.

2 A. We did.

Q. Did you send the orders to the Standard Sanitary Manufacturing Company? A. I did.

Q. And it is in response to that order, #23753, that you received this letter which is marked as Petitioner's Exhibit No. 210? A. It is.

Q. Were you able to get goods of the Standard Sanitary Manufacturing Company to fill those orders of Hodge Brothers? A. We were not.

Q. I show you a letter dated July 14th, 1910, on the letterhead of the Standard Sanitary Manufacturing Company and addressed to the Central Plumbers Supply Company, and I ask you if you received that letter?

3 A. We did.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 211."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 211."

Mr. GROSVENOR: That letter reads as follows. (Reading):

"Pittsburgh, U. S. A., July 14, 1910.

4 "Central Plumbers Supply Company,
New York, N. Y.

"Gentlemen:—

"We are in receipt of your favor of the 9th, reference C. S. H., D., addressed to New Brighton, wherein you advised that you were in receipt of postal card from them in regard to Order #23753 for P-601 Sectional Lavatories, which is marked for shipment to Hodge Bros., Mt. Vernon, N. Y.

"In reference to releasing this material and making shipment, regret to advise that we cannot do so, although this material is at present prepared for shipment, but we have instructions not to make any shipment until in receipt of your signature to the Resale Agreement which was forwarded you sometime ago. Upon receipt of your signature we will make immediate shipment. 1

"Yours truly,

"STANDARD SANITARY MFG. CO.,

"HAC. Per H. A. Craig."

Q. Have you produced in response to your subpœna the resale agreement, which this letter states was forwarded to you? 2

A. I have; in fact, I have about twenty of them.

Q. Mr. Hirschfeld, you have handed me a package of ontracts entitled "Jobber's License Agreement," similar to Government's Exhibit No. 11; about what time did you receive these contracts?

A. I received them on the morning of June 6.

Q. 1910? A. 1910.

Mr. GROSVENOR: Without offering all of these in evidence, I will state that they appear to be signed and headed as follows: Between the Day-Ward Company and the Central Plumbers' Supply Company; McVay and Walker Company and the Central Plumbers' Supply Company; A. Weiskittel Sons Company and the Central Plumbers' Supply Company; Kerner Manufacturing Company and the Central Plumbers' Supply Company; Wheeling Enameled Iron Company and the Central Plumbers' Supply Company; another one of McVay and Walker Company— 3

THE WITNESS: They were all sent to us in duplicate. 4

Mr. GROSVENOR (continuing): United States Sanitary Manufacturing Company and the Central Plumbers' Supply Company and the Cahill Iron Works and the Central Plumbers' Supply Company.

Q. Did any letters accompany those contracts?

A. They did.

DIRECT EXAMINATION.

agent of the Department

letters and ask you if

would like to have the exam-

which have been in-

as one exhibit for identi-

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letters I offer as exhibits

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letter from A.

Company containing this sen-

for you to execute these

sell you licensed sanitary

from the Wheeling

Company), containing this sentence,

execute these contracts be-

licensed sanitary enameled

from McVay and Walker

"It is necessary for you

before we can sell you

enameled ware." A letter from

Company containing the sentence,

execute these contracts

licensed enameled iron

Iverner Manufacturing

sentence: "It is necessary

of these contracts before

sanitary enameled ware."

States Sanitary Manufac-

containing the sentence, "It is

these contracts before

sanitary enameled ware."

And letter from the Standard Sanitary Manufacturing Company, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled iron ware." 1

Q. Did you execute any of these contracts?

A. We did not.

Q. You have also produced another contract or Jobber's License Agreement with the Kerner Manufacturing Company, which is dated October 11, 1910, in duplicate with a letter dated October 11, 1910; did you receive those about the time indicated? A. I did.

Mr. GROSVENOR: The letter reads as follows: 2

"Zelienople, Pa., Oct. 11, 1910.

"Central Plumbers Supply Co.,
252 Pearl St.,
New York City, N. Y.

"Gentlemen:—

"In reply to your letter of the 24th, we beg to state, that we will be glad to sell you, if you will agree to sign the enlosed Jobber's License Agreement.

"Trusting to hear from you, we beg to remain, 3

"Yours truly,

"KERNER MANUFACTURING CO.,

"CF/MD Carl Falk."

I offer that letter in evidence with the contracts attached as "Petitioner's Exhibit No. 212."

Letter and contracts referred to were then marked and filed as "Petitioner's Exhibit No. 212."

Q. Have you that letter referred to?

A. The letter referred to is simply an inquiry for a catalogue and prices.

Q. You produced a letter on the letterhead of Edwin L. Wayman, dated June 3, 1910, and addressed to the jobbing trade; did you receive that letter about the time indicated from Mr. Wayman? A. I did. 4

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 213."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 213."

1 Q. Mr. Hirschfeld, did you ever attempt to get any Standard sanitary goods to fill an order in Valhalla?

A. We did.

Q. What is the name of the customer?

A. The Jennie Clarkson Home for Girls.

Q. Who was the plumber?

A. Frank J. McGuire, of White Plains, New York.

Q. What did he ask you to get for that Home?

A. This is the list (indicating).

Q. Was this a new building being put up there?

A. Yes, sir.

2 Q. And was it to be supplied with the sanitary enameled iron ware? A. Yes, sir.

Q. And did Mr. McGuire come to you to fill his orders? A. He did.

Q. What date was this?

A. The 4th day of June is the day of the quotation; the order was not offered to the Standard Sanitary Manufacturing Company until three or four days later.

Q. Just read into the record from this order all the different items which are of sanitary enameled iron ware and which Mr. McGuire was to buy from you?

3 A. 10 waterclosets; 5 bathtubs; 10 washstands, or lavatories; 2 urinals and 1 sink.

Q. A kitchen sink? A. A kitchen sink.

Q. Did you have any dealings with any of the managers of this Home?

A. All our dealings were through Mr. McGuire.

Q. Did he specify what goods he required?

A. The goods were selected from the Standard Sanitary Manufacturing Company's New York show rooms.

Mr. NOBLE: I move that the answer be stricken out.

4 Mr. GROSVENOR: Just answer that question yes or no.

The question was then read by the stenographer.

A. Yes.

Q. Did you attempt to get these goods from the Standard Sanitary Manufacturing Company? A. I did.

Q. How?

A. Mr. McGuire called at our place of business and stated that he was ready for the fixtures, meaning the

bathtubs and the lavatories and so forth for the Jennie Clarkson Home for Girls; I informed him he had better talk with Mr. Bassett of the Standard Sanitary Manufacturing Company's New York office, and he called up Mr. Basset and Mr. Bassett informed him— 1

Mr. NOBLE: Don't state that. I object to what Mr. Bassett informed him over the telephone.

THE WITNESS: Well, Mr. Bassett told me—

BY MR. GROSVENOR:

Q. Who is Mr. Bassett?

A. He is employed by the Standard Sanitary Manufacturing Company and is connected with their New York office. 2

Q. What did he say to you?

A. He informed me that he could not accept the order for the Jennie Clarkson Home for Girls, that the job would have to be re-figured, and he said it did not make any difference what jobber got the order because they would have to be figured at the re-sale prices.

Q. Did he say anything about the contract? A. No, sir.

Q. Did you do anything later to get the goods from the Standard Sanitary Manufacturing Company? 3

Mr. NOBLE: Objected to. He said that he told Mr. McGuire that he had better talk to Mr. Bassett.

Mr. GROSVENOR: Read the question.

The stenographer then read the question.

A. We did not.

Q. Mr. McGuire was a plumber? A. That is right.

Q. And in the course of business the plumber goes to the jobber for goods? A. That is correct.

Q. And the plumber installs them in the house after they are furnished to him by the jobber?

A. That is correct. 4

Q. Did you give up the order of Mr. McGuire?

A. We informed Mr. McGuire that we could not procure the Standard Sanitary Manufacturing Company's goods for the Jennie Clarkson Home for Girls and that if he insisted on our furnishing those goods, we would have to refuse the order, and I asked Mr. McGuire to take the matter up with their people and have other goods substituted.

Q. Well, whose goods were finally substituted?

A. We substituted the J. M. Kohler Company's goods.

Q. Where is the Kohler Company?

A. In Sheboygan, Wisconsin.

Q. Well, coming back to this order for Hodge Brothers, for the Westchester Lighting Company, what were those orders for?

A. Sectional lavatories; four or five lavatories joined together and called sectional lavatories.

Q. All of that was in sanitary enameled iron ware?

A. All sanitary enameled iron ware goods.

Q. I now show you a letter dated August 10, on the letterhead of the Standard Sanitary Manufacturing Company and signed by J. F. Conran; did you receive that letter? A. Yes.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 214."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 214."

Mr. GROSVENOR: The letter reads as follows:

"New York, N. Y., August 10th, 1910.

"Central Plumbers Supply Company,
252 Pearl Street,
City.

"Gentlemen:—

"I have your letter of August 9th and contents carefully noted. Beg to say that we have taken this matter up with our Order Department, but up to the present time, have not received the information, however, as soon as we do, will communicate further with you.

"The writer understands your position in regard to this matter fully, but it is also his personal opinion that you ought to sign the Agreement. If the Courts decide that it is illegal the matter will be dropped and the arrangements dissolved, but there is no question in the mind of every lawyer who has examined the instrument that it is perfectly legal, and we think the Courts will so decide, but as you know, getting a decision on questions

of this kind is slow work and no one would like a quick decision better than our company, and in the meantime, we think that you ought to sign this Agreement for the good of the business in general, it will entail no hardship on you, as you are practically living up to the prices agreed on. 1

"Yours respectfully,

"STANDARD SANITARY MANUFACTURING COMPANY,

J. F. Conran, Mgr."

Q. Now, Mr. Hirschfeld, I show you Petitioner's Exhibit No. 30, that is the part thereof which is the printed book, and ask you if that is a list of the principal jobbers of sanitary enameled iron ware of the United States? 2

A. It is.

CROSS EXAMINATION BY MR. NOBLE:

Q. Mr. Hirschfeld, the letter which is Exhibit No. 214, which counsel for Government offered in evidence, contains this sentence, "There is no question in the mind of every lawyer who has examined the instrument that it is perfectly legal, and we think the Courts will so decide, * * * " You remember getting the letter containing that sentence, do you not? A. I do. 3

Q. I understood you to say that you got these various proposed contracts with the various companies which the Government has marked as Exhibit for identification No. 14, accompanied by the letters which the Government has had marked as Petitioner's Exhibit for identification No. 15, on the morning of June 6th; am I correct as to that? A. You are.

Q. And it was on the morning after you received those letters you got the order about which you first told Mr. Grosvenor which was the order known as No. 23753, with reference to Hodge Brothers; am I correct? 4

A. The order of Hodge Brothers was placed about two days after the receipt of these communications.

Q. In other words you received the order from Hodge Brothers probably on the morning of June 8th; is that what you mean? A. About that time.

Q. And you sent it forward to the Standard Sanitary Manufacturing Company on June 10?

A. I sent it on June 8; I mailed it myself. I remem-

ber that distinctly. I mailed it to the Standard Sanitary Manufacturing Company in Pittsburgh?

Q. I notice that among these letters which you received, there are a number that are mutilated, the name of the addressee being cut out? A. That is correct.

Q. How did that happen? A. I mutilated them myself.

Q. Tell the circumstances of that?

A. Mr. Darling, the Special Agent for the Government, called to see me and asked me if I would let him have these letters, and I said I would, and I asked him if he would object to our cutting our name out, and he said he did not think it would make any difference, so it was cut out.

Q. All the papers which you have produced this morning were shown to Mr. Darling previous to your being subpœnaed?

A. No, sir; they were not. There are some things that were produced here and not shown to them before.

Q. Didn't you give him several copies of the contracts between the Standard Sanitary Manufacturing Company and—

A. (Interrupting): Yes, sir; several.

Q. Were those produced here? A. No, sir.

Q. So you were not correct when you said that you produced here things which you had not shown to Mr. Darling previously?

Mr. GROSVENOR: I called the names of all the contracts which were handed to me by the witness and the Standard Sanitary Manufacturing Company contract was not among them.

Mr. NOBLE: And I call attention of counsel to the fact that the Standard Sanitary Contract was not among them.

Mr. GROSVENOR: And I read those names on the record to show that that was not included.

Q. These letters which you mutilated were supplied to Mr. Darling, were they not? A. Yes, sir.

Q. And the others that were not mutilated?

A. They were also supplied to Mr. Darling; if I did not cut the names out it was an oversight.

Q. So as to all the letters with the contracts those you had previously supplied to Mr. Darling? A. Yes, sir.

Q. And the letters accompanying the contracts you had shown to Mr. Darling? A. I showed him copies of them. 1

Q. I observed that in this one which you received from the Wheeling Enameled Iron Company there is no name on it; was it sent to you?

A. The envelope was addressed to us and the contract is also; possibly the Wheeling Company sent out a lot of them and—

Q. But that is all speculation on your part?

A. Yes, sir.

Q. Then, how do you know that this is the one which you received through the mail; what have you on it to identify it? 2

A. I have no mark on it whatsoever, but if Mr. Darling will testify that this is the one which I gave him I will be perfectly willing to swear to it.

Q. And that is true as to the other copies? A. Yes, sir.

Q. In these various contracts which you produced and which are marked No. 14 for identification, I call your attention to the fact that the discounts allowed the jobber in those various contracts differ one from the other, that is that the Day-Ward Company's differs from McVay and Walker's and so on?

A. There are various differentials allowed. 3

Q. Which are different?

A. There are a number of them alike and a number are different.

Q. Will you point out the ones that are alike?

A. The United States Sanitary Manufacturing Company's and the Cahill Iron Works.

Q. But the others differ each from the other?

A. No, the others have the differentials marked on them—

Q. (Interrupting): And those differ as to each other?

A. They differ as to the first ones. 4

Q. The differentials in the others differ from the differentials of the Cahill and the United States Sanitary?

A. Yes, sir.

Q. And do they differ from each other?

A. That is the discount allowed after the differentials, yes.

Q. You stated since June 1st, 1910, that you have bought

1 goods from the Standard Sanitary Manufacturing Company? A. Yes, sir.

Q. You stated some were bought on orders placed prior to June 1st? A. Yes, sir; they were.

Q. And were some on orders placed subsequent to June 1st? A. Some were.

Q. Is that true as to any other licensed sanitary enameled iron ware manufacturers?

A. We had no unfilled orders with any manufacturers other than the Standard Sanitary Manufacturing Company on June 6th.

2 Q. Did you order goods from the other licensed manufacturers subsequent to June 1st?

A. We ordered enameled goods—

Mr. GROSVENOR: Just answer that yes or no.

The stenographer then read the cross question.

A. We did.

Q. Which one? A. The Cahill Iron Works.

Q. Did you get goods from them? A. We did.

Q. Who else?

A. That is all the enameled goods we had on order
3 from these so-called licensed manufacturers.

Q. My question was—I don't think you heard it—did you order goods subsequent to June 1st from any other licensed manufacturers? A. We did.

Q. What companies did you order goods from?

A. The Cahill Iron Works.

Q. Did you get those goods? A. Yes, sir.

Mr. GROSVENOR: You mean by the word "goods" sanitary enameled iron ware?

THE WITNESS: Yes, sir.

4 BY Mr. NOBLE:

Q. Did you order any sanitary enameled iron ware from the Barnes Manufacturing Company? A. We did not.

Q. Did you order any sanitary enameled iron ware from the United States Sanitary Manufacturing Company?

A. We tried to.

Q. Did you order any goods from the Humphryes Manufacturing Company?

A. We tried to, from the New York warehouse, I remember. 1

Q. Did you order any from Weiskittel? A. We did not.

Q. You get your sanitary enameled iron ware goods from whom?

A. The Iron City and the J. M. Kohler and the Blairsville people.

Q. Are they large manufacturers of sanitary enameled iron ware goods? A. They are supposed to be.

Q. Are you familiar with the sanitary enameled iron ware business throughout the United States?

THE WITNESS: Do you refer to the size of their companies? 2

Q. Are you familiar with the output of the various manufacturers of sanitary enameled iron ware?

A. I am not.

Q. Are you familiar with what manufacturers are regarded in the trade as large manufacturers? A. I am.

Q. State who they are?

A. The largest manufacturer is supposed to be the Standard Sanitary Manufacturing Company.

Q. What is the next after that? 3

A. The L. Wolff Manufacturing Company of Chicago?

Q. And next after that?

A. The United States Sanitary Manufacturing Company.

Q. And the next after that?

A. A. Weiskittel & Sons Company.

Q. And the next after that?

A. The Humphryes Manufacturing Company.

Q. What is the next?

A. I couldn't say I know the grading after that.

Q. Where do the Iron City and Kohler Company come in? 4

THE WITNESS: The Iron City and Kohler?

Mr. NOBLE: Yes.

A. In proportion to the amount of goods produced, they—

Mr. NOBLE: Yes, the same as you have been grading these people?

1 A. Well, I shouldn't call either the Kohler people or the Iron City or the Blairsville Company as large as either the Standard Sanitary Manufacturing Company or the L. Wolff Company.

Q. But you would put them in immediately after The Standard and the Wolf? A. Yes.

Q. Now, what goods did you supply Hodge Brothers?

THE WITNESS: What goods did we supply Hodge Brothers?

Mr. NOBLE: Yes.

2 A. We supplied them with enameled iron lavatories and various other plumbing goods; the lavatories were the only sanitary enameled iron ware.

Q. Counsel for Government asked you whether or not your concern was known as the Central Plumbing Supply Company, and he asked you to enumerate the sanitary enameled ware articles you handled and what other articles you handled, and I understood you only to enumerate sanitary enameled iron ware; what other articles in the plumbing trade do you carry?

A. Earthen ware, lead papes, iron pipes; copper goods;
3 fittings; bath cocks; and other articles of the same type.

Q. Then, the sanitary enameled iron ware is only a part of your business? A. Only a part of the business.

Q. What make of goods was this sanitary enameled iron ware that you furnished Hodge Brothers as you referred to?

THE WITNESS: What, in place of those he ordered, do you mean?

Mr. NOBLE: Yes, read him the question.

The stenographer then read the cross question.

A. The Blairsville Enameled Iron Ware Company's
4 make of goods.

Q. Please state what the per cent. of the enameled iron ware business done by you in your business is to the total business you do in plumbing supplies?

A. About 33-1/3 per cent.

Q. Are you familiar with the business of other jobbers?

A. I cannot say that I am.

Q. So you could not give an estimate of those. Mr. Grosvenor asked you if Mr. Darling was the Special Agent

of the Department of Justice and you answered that he was. Will you tell me how you know that? 1

A. Mr. Darling presented his credentials to me and attached to his credentials was his photograph and I looked at the photograph and then at Mr. Darling and I was satisfied that he was the man in question.

Q. After he had presented you with his credentials and his photograph you then gave him these various papers which you have talked about? A. I did.

Q. What, in addition to showing you his credentials and photograph that you have referred to, did Mr. Darling do, if anything, as evidence of his authority or power before you exhibited these papers to him? 2

Mr. GROSVENOR: I object to this as being frivolous and immaterial and irrelevant; it is almost whimsical.

THE WITNESS: What was the question?

The stenographer then read the cross question.

A. Before I showed him the papers, I asked him what he wanted, what he came to see me about, and he informed me that he was at work on the case for the Government in reference to the enameled bath tub trust that the papers had been talking about, and asked me if we had signed a license agreement, and he asked me to show him any communications from the licensed manufacturers that we had, and I showed him all that I had. 3

Q. Is that all that took place before you showed him these various papers?

A. That is all that took place, as far as I can recall.

Q. You spoke of a contract which you were offered by McGuire, a plumber? A. Yes, Frank J. McGuire.

Q. Did that specify Standard Sanitary goods?

A. I have here a copy of the quotations which I made to Mr. McGuire and which speaks of Standard goods; you can read it if you wish to. 4

Q. I notice in this letter which you hand me and which is dated June 4, 1910, that you say, "We have figured Standard Sanitary goods and the architects can see these goods at the Standard Sanitary Manufacturing Company's show rooms." That was the first mention by you to McGuire of the Standard Sanitary goods?

A. For the Jennie Clarkson Home.

Q. So the first mention of these goods came from you to Mr. McGuire? A. Correct.

Q. Who are Peck Brothers mentioned here? Are they jobbers also? A. They are.

Q. What is the estimate referred to here as having been left with you?

A. The enameled bath tubs and wash stands that were to be used in the Jennie Clarkson Home for Girls.

Q. And on whose goods had they figured?

A. Their own.

Q. Are they manufacturers?

A. They specified their own figure numbers and we supposed they were their own goods.

Q. Are they manufacturers of sanitary enameled iron ware?

A. They manufacture brass goods, but I don't know anything about the enameled iron goods.

Q. What is their reputation in the trade as to that?

A. They haven't the reputation in the trade as being manufacturers of sanitary enameled iron goods.

Q. You say they have not? A. They have not.

Q. You supplied these goods for the Jennie Clarkson Home, you got them from the J. M. Kohler Sons Company?

A. We did.

RE-DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Can you obtain the goods of the Standard Sanitary Manufacturing Company from them today?

A. We cannot.

Q. Have you made effort so to do? A. We have.

Q. To whom?

A. Through their New York office and through their New York warehouse.

Q. Can you obtain the goods today of the United States Sanitary Manufacturing Company? A. We cannot.

Q. Have you tried? A. We have.

Q. Can you obtain the goods of the Cahill Iron Works?

A. We cannot.

Q. Have you tried? A. We have.

Q. Can you obtain the goods of the Humphryes Manufacturing Company? A. We cannot.

Q. Have you tried? A. We have.

Q. Will you look at the list of these defendant corpora-

tions (indicating) and state whether or not you have tried to obtain the goods of any of those companies recently other than the names which you have just given? 1

A. The Barnes Manufacturing Company is the only additional manufacturer.

Q. Can you obtain their goods? A. We cannot.

Q. You have tried? A. We have tried.

Q. This letter from the Wheeling Enameled Iron Company, to which the counsel for defendant referred, that is a printed letter or a mimeographed letter?

A. Yes, that is a printed letter.

Q. All these contracts which you have testified were received by you on June 6, were printed? 2

A. Yes, sir; the contracts were printed with the exception of the notations for discounts; some were written in with the typewriter and some with pen and ink.

Q. That is the discount?

A. Yes, sir; that is in addition to the printed portion.

RE-CROSS EXAMINATION BY MR. NOBLE:

Q. You say you tried to get goods from the Standard Sanitary Manufacturing Company; when?

A. At various times; some times twice a day between the 10th and 11th of June until the first of October. 3

Q. What was the reason assigned for your not getting them?

A. Because we had not signed the license agreements; we were so informed over the telephone and our drivers were so informed when we sent orders to the warehouse.

Q. Were you personally informed?

A. Yes, sir; I was; over the the telephone.

Q. With whom did you talk?

A. Mr. Conran, when he came to our place and said I would be doing nothing illegal and if the Courts declared it was, that they would go back to the old way. 4

Q. He said he thought it was legal. A. Yes, sir.

Q. These other manufacturers to whom you have referred, did you have personal talks with them or letters?

A. We had personal talks with Mr. Kessell of the Barnes Manufacturing Company and Mr. Hutchinson of the Cahill Iron Works and Mr. Ham of the United States Sanitary Manufacturing Company.

Q. Do you sell to the plumbers? 1

A. To the plumbers; yes, sir.

Q. Where are your customers located?

A. In the metropolitan district and the different states of the Union.

Q. In New Jersey? A. Yes, sir.

Q. And Connecticut? A. Yes, sir.

Q. Massachusetts? A. Yes, sir; Massachusetts.

Q. Pennsylvania? A. Yes, sir.

Q. Do you receive orders from your customers located in these several states? A. Yes, sir.

Q. Have you shipped from your stock to them? 2

A. Yes.

Q. Previous to June 1st, 1910, whose goods did you handle, that is, manufactured by what company?

A. The different manufacturers.

Q. The Standard Sanitary Manufacturing Company?

A. Yes, sir.

Q. And the United States Sanitary Manufacturing Company?

A. That I could not tell you; I didn't do any of the detail work.

Q. Well, you have been subpœnaed to produce certain 3 documents? A. Yes, sir.

Q. Have you them with you?

A. I have them; I know very little about the details, though; I have done very little of the buying for some years; my son and others attend to that.

Q. How long has your Company been in this business?

A. About fifty years.

Q. As jobbers of plumbers supplies?

A. Yes, and manufacturers.

Q. Are you manufacturers of sanitary enameled iron ware? A. No, sir. 4

Mr. GROSVENOR: The witness has produced a letter dated June 28th, on the letterhead of the Standard Sanitary Manufacturing Company. I offer it as "Petitioner's Exhibit No. 215."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 215."

Mr. GROSVENOR: That letter reads as follows:

"Pittsburgh, U. S. A., June 28th, 1910.

"Messrs. Mayor, Lane & Co.,
New York, N. Y.

Gentlemen:—

"We are in receipt of your favor of the 23rd inst. answering ours of the 20th with further reference to placing your order for a number of items of enameled ware. We note your general remarks with reference to the same and would state that under the Resale arrangement it would be necessary for you to sign the Jobbers license agreement in order to secure licensed enameled ware. As outlined to you in our several communications there is very little difference if any in the present resale prices and former prices applying to our enameled ware and we trust that after carefully considering the matter you can see your way clear to favoring us with your signature, and are,

"Very truly yours,
"STANDARD SANITARY MFG. CO.,
"H. J. C. Heckman,
"HJHC' Mgr. Quotation Department."

Q. Have you signed any license agreement so called with any manufacturers of sanitary enameled iron ware?

A. We have not.

Q. Your Company is recognized as jobbers in the trade?

A. Yes, sir.

Q. Your name is in the book which contains the names of practically all the jobbers in the United States?

A. Yes, sir.

Q. You have produced under subpœna certain jobber's license agreements which are all similar to Government's Exhibit No. 11; can you state on or about what date you received those? A. Somewheres around June 10.

Mr. GROSVENOR: I offer these in evidence and asked that they be marked for identification as Exhibit No. 16.

Letters referred to were then marked as "Exhibit No. 16" for identification, offered by the Petitioner.

Mr. GROSVENOR: This exhibit for identification No. 16 contains a letter dated June 6th, 1910, from

the Humphryes Manufacturing Company with a jobber's license agreement attached to the letter and sentence in the letter containing the words, "It is necessary for you to execute the contract before we can sell you licensed sanitary enameled iron ware"; a letter and contract from A. Weiskittel and Son Company containing the sentence, "It is necessary for you to execute the contract before we can sell you licensed sanitary enameled ware," that letter was dated May 31st, 1910; the next was a letter from the Kerner Manufacturing Company dated June 6th, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter from McVay and Walker, dated June 4, 1910, with contract attached, the letter contains the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter from Wheeling Enameled Iron Company, dated June 6th, 1910, and containing the sentence, "It is necessary for you to execute the contract before we can sell you licensed sanitary enameled ware," attached thereto being a jobbers license agreement; a letter from the Cahill Iron Works, dated June 1, 1910, with contract attached, the letter containing the sentence, "It is necessary for you to execute the contract before we can sell you licensed sanitary enameled ware," and a letter with contract in duplicate from the Standard Sanitary Manufacturing Company, dated June 4, 1910, and containing the sentence, "It is necessary for you to execute the contract before we can sell you licensed sanitary enameled ware."

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By Mr. Grosvenor:

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Q. Here is a letter dated June 4, 1910, on the letterhead of W. A. Myler, Pittsburgh, Pennsylvania, addressed Mr. F. G. Ellis, Mayor, Lane & Company, New York, and signed by W. A. Myler; who is Mr. Ellis?

A. One of our buyers.

Mr. Grosvenor: I offer this letter as "Petitioner's Exhibit No. 216."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 216."

Mr. GROSVENOR: That letter reads as follows:

"June 4th, 1910.

"Mr. F. G. Ellis,
Mayor, Lane & Co.,
New York, N. Y.

"Dear Sir:—

"The re-sale arrangement for enameled ware will go into effect Monday next June 6, 1910. The special rebates which you have been enjoying from our company will then be withdrawn and I will send you as soon as possible check to cover rebates due you on goods shipped to and including Saturday June 4th. The terms upon which the manufacturers have agreed to sell to the jobbers under the new plan will be forwarded to you promptly and will, I believe from what I know, be satisfactory to you.

"Thanking you for the confidential relations that have existed between us in the past, and trusting that our business relations may be equally as satisfactory in the future, beg to remain,

Yours truly,

W. A. Myler."

Mr. GROSVENOR: You have produced the following letters also: A letter on the letterhead of the Humphryes Manufacturing Company, dated June 6, 1910, and signed by Mr. Laing of that Company; also a letter from the McCrum-Howell Company, dated June 3, 1910, and signed by Howard T. Gates, Secretary, and a letter from the Cahill Iron Works, dated June 4, 1910, and signed by that Company. I offer those letters as "Petitioner's Exhibits No. 217, 218, and 219" respectively.

Letters referred to were then marked and filed as "Petitioner's Exhibit Nos. 217, 218 and 219" respectively.

Mr. GROSVENOR: Those letters read as follows:

"New York, N. Y., 6/6/10. 1

"Gentlemen:—

"We hereby advise you of the withdrawal of all previous quotations on Enamelled Ware.

"Yours very truly,

"THE HUMPHRYES MFG. CO.,

"A. J. Laing, Mgr."

"New York, June 3rd, 1910.

"Effective on the morning of June 6th, 1910, all prices on RICHMOND Enameled Iron Ware are hereby withdrawn. New prices will be furnished on application. 2

Yours very truly,

Howard T. Gates,

"HTG-EMT" SECRETARY

"Chattanooga, Tenn. U. S. A.,

June 4, 1910.

"TO THE TRADE:—

"Effective this date all previous quotations, discounts and net prices are withdrawn and are superseded by the price list dated June 1st, on "Licensed Sanitary Enameled Iron Ware, which you will receive from Edwin L. Wayman, Licensor. 3

"You will note by referring to this price list that we have changed our lists on a number of fixtures. We will advise you just what these changes are in a few days, and will also send you a sheet giving list of our plate numbers and page of price list on which each is shown.

Yours truly,

"HWP-W THE CAHILL IRON WORKS."

Mr. GROSVENOR: The witness has produced certain circulars on the letterhead of Edwin L. Wayman: They are dated respectively May 28th, June 3rd, and 4 July 23rd, and they are all addressed "To The Jobbing Trade" and are printed letters; I offer them all as one exhibit for identification and ask that they be numbered 17.

Letters referred to were then marked and filed as "Exhibit No. 17" for identification, offered by the Petitioner.

CROSS EXAMINATION BY Mr. NOBLE:

Q. You do not know what manufacturers your Company

1 did business with previous to June 1st? A. I don't know.

Q. You don't know what companies you do business with now? A. No.

Q. You say your Company did not sign any of these license agreements? A. Yes, sir.

Q. Did you talk with anybody about signing them?

A. Not individually; no, sir.

Q. Who in your Company decided that you would not sign? A. My son.

Examination concluded and signing of deposition
2 waived by agreement of counsel for the respective parties.

VICTOR A. HARDER, JR., a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Harder, you are connected with the firm of Mayor, Lane and Company? A. Yes, sir.

Q. You are the son of the last witness? A. Yes, sir.

3 Q. You are in actual charge of that business?

A. I am the Secretary.

Q. With what companies did you do business with regard to sanitary enameled iron ware previous to June 1st, 1910?

A. With the Standard Sanitary Manufacturing Company; A. Weiskittel & Son Company; the Cahill Iron Works; Day-Ward Company; Humphryes Manufacturing Company; Kerner Manufacturing Company; McVay & Walker Company; the McCrum-Howell Company; the United States Sanitary Manufacturing Company;—we did not do very muh business with the United States Sanitary
4 Company—the Wheeling Enameled Iron Company.

Q. Turn to page 10 of the Petition and see if you did business with any of the companies mentioned there?

A. Yes, we did.

Q. Name them?

A. J. M. Kohler Sons Company, Sheboygan; the Iron City Sanitary Manufacturing Company; the Blairsville and the Clymer Manufacturing Companies.

Q. What percentage of the business done by you in the

sanitary enameled iron ware was done by these companies you first named, that is those on pages 3 and 4 of the Petition? A. Well, about fifty per cent. 1

Q. Are you able to get the goods of the Standard Sanitary Manufacturing Company today from them?

A. No, sir.

Q. Have you tried? A. We have.

Q. Are you able to get the goods of A. Weiskittel & Son Company? A. No.

Q. You have tried?

A. No, I don't think we have tried with Weiskittel.

Q. You received that letter which has been introduced in evidence from them? A. Yes, sir; we did. 2

Q. Are you able to get the goods of any of these companies who are on pages 3 and 4 of the Petition?

A. No, we are not.

CROSS EXAMINATION BY Mr. NOBLE:

Q. How much of the total of your business does the sanitary enameled iron ware portion constitute?

A. Without having any figures I would say from fifteen to twenty per cent.

Q. You are engaged in the jobbing of plumbers supplies? A. Yes, sir. 3

Q. And you supply all sorts of things besides sanitary enameled iron ware? A. We do, sir.

Q. Are you familiar with the standing in the trade of the various companies who manufacture sanitary enameled iron ware?

A. Only from hearsay; I have only been through two plants, that is the Standard Sanitary Manufacturing Company and Dawes and Myler, and that was four or five years ago, when I was in Pittsburg.

Q. In the trade, what is the reputation as to size of the various manufacturers? 4

A. The Standard Sanitary Manufacturing Company has always been considered the largest.

Q. And the next largest?

A. Wolff was always considered a very large manufacturer.

Q. Who else, Kohler?

A. Cahill Iron Works, I believe, and the Iron City Company.

1 Q. And the Blairsville?
A. I do not consider them as such a large concern.
Q. The Clymer Company?
A. I don't think they are so large.
Q. They are bigger than some of these others?
A. Oh, yes, sure.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

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2 JOHN G. FLECK, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. What is your business?
A. Plumbers supply business.
Q. Of what company? A. Fleck Brothers Company.
Q. Where are you located? A. Philadelphia.
Q. You deal as jobbers in sanitary enameled iron ware?
A. We do.
3 Q. You sell to the jobber and to the plumber?
A. We do.
Q. Where are your customers located?
A. All over the country.
Q. Largely outside of the State of Pennsylvania?
A. No, principally in the State of Pennsylvania.
Q. What other states outside of Pennsylvania?
A. I guess every state in the Union.
Q. Do you receive orders from these plumbers and then ship from your warehouse? A. Yes, we do.
Q. And do you also send orders to the factories?
A. Yes, sir; for direct shipment.
4 Q. And they make shipment to the customers?
A. Yes, sir.
Q. Prior to June 1st, 1910, with what manufacturers of sanitary enameled iron ware did you do business?
A. The Standard Sanitary Manufacturing Company and the Cahill Iron Works.
Q. State where they are located?
A. Standard Sanitary Manufacturing Company is in Pittsburg and the Cahill Iron Works in Chattanooga, Ten-

nessee, and the United States Sanitary Manufacturing Company in Monaca; I think that is all of them. 1

Q. You have been subpœnaed to produce certain papers and contracts; have you them with you? A. I have.

Mr. GROSVENOR: The witness has produced a letter on the letterhead of the Standard Sanitary Manufacturing Company, Louisville, Kentucky, July 13, 1910, addressed to Fleck Brothers, Philadelphia, Pennsylvania. I offer that in evidence as "Petitioner's Exhibit No. 220."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 220." 2

Mr. GROSVENOR: That letter reads as follows:

"Louisville, Ky., July 13, 1910.

"Fleck Bros.,
Philadelphia, Pa.

"Gentlemen:—

"In going over the list of names sent in by Mr. E. L. Wayman, and which embraces all the jobbers who have signed the re-sale contract on Enameled Ware, I fail to find you among them. I regret to see that 3
you have so far not seen fit to join with us.

We need your support, as your house is one of the largest and most influential in the business, and has always been a large buyer of Enameled Iron Ware. The plan as proposed will be of great benefit to the jobber, and will insure a satisfactory margin of profit on a line that has heretofore been fiercely competitive, and on which the profit in many instances has been cut down to almost nothing.

We will greatly appreciate your support, and hope you will send us your signed contract. I will be 4
obliged to you if you will favor me with your views on the subject.

Awaiting your reply, I am,

Yours very truly,

Theo. Ahrens,
"A. President."

Q. Now, that letter refers to a signed contract; did you receive about June 6th, certain contracts?

A. Yes, sir; they are lying there in front of you.

Mr. GROSVENOR: You have produced contracts and letters as follows; which I offer as Exhibit for identification No. 18: A letter from the United States Sanitary Manufacturing Company, dated May 31st, 1910, addressed to your Company, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; attached thereto was a contract or jobber's license agreement; also a letter from the Standard Sanitary Manufacturing Company, with contract attached, dated June 6th, 1910, and containing the sentence, "It is necessary for you to execute both of these contracts before we can sell you licensed sanitary enameled ware"; a letter from McVay & Walker, dated June 4th, 1910, addressed to your Company and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; attached thereto were contracts in duplicate also. A letter from the Wheeling Enameled Iron Company, dated June 6th, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter and contract from the Standard Manufacturing Company, dated June 4th, 1910, and addressed to your Company and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; letter and contract from the Humphryes Manufacturing Company, dated June 6th, 1910, and addressed to your Company, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; also a contract dated June 6th, from the National Sanitary Manufacturing Company; also a contract dated June 1st, 1910, from the Cahill Iron Works.

Q. Was there a letter with those two last contracts?

A. Yes, sir; of the same character.

Q. Here are certain contracts dated October 15th, from the Day-Ward Company; did they have a letter with them?

A. Yes, sir; I think that applies to something else. 1

Q. Was it suggested at the time that you sign the contracts?

A. No, sir; simply the letter received as you have it there.

Q. Has your Company executed a contract with any of the licensed manufacturers? A. No, we have not.

Q. Have any of the manufacturers suggested to you that you should?

A. Yes, they have requested it quite a number of times.

Q. Have you had any interviews with any of the representatives of the Standard Sanitary Manufacturing Company respecting that matter? A. I have. 2

Q. Can you give the time?

A. Well, there have been many of them and the subject came up so often that I really couldn't give the times.

Q. You have persistently refused to sign it?

A. I refused to sign; there were very few requests, but a great many interviews.

Q. What kind of requests? Written?

A. No, verbal requests.

Q. Was there an interview in June about the subject, during the latter part of the month? 3

A. Why, yes, we had interviews right along.

Q. Were you present at a meeting of jobbers and others on June 29, 1910, in Philadelphia? A. Yes, I was.

Q. Where was that meeting?

A. At the Bellevue-Stratford.

Q. Who were present? A. Mr. Wayman, Mr. Torrance,—

Q. What is his full name? A. Francis J. Torrance.

Q. He is the Vice-President of the Standard Sanitary Manufacturing Company? A. Yes, sir.

Q. Who else?

A. Mr. Wayman, Mr. John A. Kelly, of the Iron City Manufacturing Company. 4

Q. Is that a licensed manufacturer?

A. No, he is independent; and Mr. Bardman of Ronalds and Johnson, New York City, and Mr. Thorndyke of the F. W. Webb Company, Boston.

Q. Are they jobbers of sanitary enameled iron ware?

A. Yes, sir.

Q. Who else?

A. Mr. Charles Perry, of the Standard Sanitary Manufacturing Company; Mr. F. W. Webb, of Boston for a short time, I think, and Mr. J. D. Johnson, of Philadelphia, I think for a short time.

Q. Who called that meeting?

A. The meeting was called by Mr. Wayman.

Q. By letter?

A. No, by telephone; my message was received by telephone. I do not know about the balance.

Q. When did you meet?

A. My recollection is about the 28th of June.

Q. What time of the day, I mean?

A. About ten-thirty in the morning.

Q. How long were you together?

A. We were in session until about half past eight in the evening.

Q. What was the principal subject of the conference?

A. The re-sale proposition in general.

Q. You mean the license agreement?

A. Yes, sir; Mr. Kelly was there of the Iron City Manufacturing Company and he did not want us to sign the agreement, and Mr. Torrance and Mr. Wayman wanted us to sign it, and there was a general discussion pro and con.

Q. Did you have before you the Government's Exhibit No. 11, which is the Jobber's License Agreement?

A. No, I don't think that we did.

Q. That was discussed, however?

A. No, only whether it would be advisable for us to sign it or not.

Q. Was it suggested by Mr. Torrance that you should sign? A. Yes.

Mr. NOBLE: The Witness said that Mr. Wayman and Mr. Torrance asked him to sign it and Mr. Kelly asked him not to. He has already testified to that.

Mr. GROSVENOR: I will go into that as often as I please.

Mr. NOBLE: I will state that counsel for Government's statement is not in reply to the objection which I made.

BY MR. GROSVENOR:

Q. Returning to this subject, Mr. Fleck, I call your

attention to the 10th paragraph of Government's Exhibit No. 11, which reads as follows: "The purchaser also agrees during the life of this contract, not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in sanitary enameled iron ware of any manufacturers not licensed under the letters patent enumerated herein, except with the express written permission of the Licensor. Breach of any of the provisions of this agreement, or any failure to maintain and observe the prices, rules or regulations, shall give the Company, or E. L. Wayman, owner of the patents hereinbefore enumerated, an option to immediately cancel this contract, all unfilled orders and to withhold all rebates; and the purchaser is hereby expressly put on notice that in case of any such failure he cannot thereafter obtain sanitary enameled iron ware manufactured under the letters patent above enumerated from any of the licensed manufacturers." Was that provision of the contract considered and the subject matter referred to? 1 2

THE WITNESS: At this meeting?

Mr. GROSVENOR: Yes.

A. Yes, sir.

Q. What was said about it?

A. Well, I cannot recollect any definite statement or conversation about it. It was an all day session and there was a whole lot said pro and con. 3

Q. Pro and con on this provision?

A. No, whether we should sign this Wayman agreement or not; whether we should come in or stay out; that special paragraph that you read was not discussed as a paragraph or as a statement.

Q. But the subject matter was discussed?

A. The subject matter was discussed during the meeting.

Q. Did you ask if you would be allowed to buy and sell the goods of manufacturers not licensed, if you signed the agreement? A. We did. 4

Q. What were you told? A. That we could not.

Q. By whom? A. Mr. Wayman.

Q. Anybody else? A. No.

Q. Did you sign? A. No.

Q. Mr. Fleck, your Company has been jobbers how long of sanitary enameled iron ware? A. About twenty years.

Q. You are recognized as jobbers? A. We are.

Q. And your name appears in the book containing the names of the principal jobbers in the United States, which is known as Petitioner's Exhibit No. 30? (Indicating.)

A. Yes, sir.

CROSS EXAMINATION BY Mr. NOBLE:

Q. You are familiar generally with the business of sanitary enameled iron ware over the country, are you not?

A. Yes, sir.

Q. Is your Company a corporation?

A. No, we are a co-partnership.

Q. And you have branches in various cities?

A. No, just in Philadelphia.

Q. You sell goods, however, all over the country?

A. Yes, all over the country.

Q. Do you deal generally in plumbing supplies?

A. We do.

Q. About what percentage of your business would you say the sanitary enameled iron ware constituted?

A. I would say from about twenty to twenty-five per cent.

Q. What is the relative standing in the trade, Mr. Fleck, in point of size of manufacture of the companies like the Iron City or the J. M. Kohler Sons Company?

A. Well, the Standard Sanitary Manufacturing Company, of course, are the top of the heap, and I should say that Wolff comes next and third I would place the Iron City or the United States Sanitary Manufacturing Company and Kohler and Cahill and the Wheeling Enameled Iron Company and the Blairsville Company, I guess, and Weiskittel would come in about eleven or twelve.

Q. That is about the order in which you would place those which you have mentioned? A. Yes, sir.

Q. Now, this meeting of June 28th, or 29th, about which you testified, you said you had a meeting practically all day; you were discussing the license agreement which Mr. Wayman offered you?

A. Yes, sir; not so much the agreement as whether we would go into the thing or not.

Q. As to whether you would sign the agreement which Mr. Wayman offered you? A. Yes, sir.

Q. The real subject was whether you would or would not sign the licenses? A. Yes, sir.

RE-DIRECT EXAMINATION BY Mr. GROSVENOR: 1

Mr. GROSVENOR: I offer this letter in evidence which is dated August 15th, 1910, and addressed to Messrs. Fleck Brothers, 46 North Fifth Street, Philadelphia, Pennsylvania, from the Cahill Iron Works, and ask that it be marked as "Petitioner's Exhibit No. 221."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 221."

Mr. GROSVENOR: That letter reads as follows:

"Chattanooga, Tenn, U. S. A., 2

August 15, 1910.

"Messrs. Fleck Brothers, Co.,
46 North Fifth St.,
Philadelphia, Pa.

"Gentlemen:—

"Yours of the 12th to hand.

"We want you to understand that we want all the business we can get and it is unpleasant to us to hesitate the least bit in filling any order a reputable dealer like yourselves sends in to us. 3

"At the same time in accepting the license we are expected to live up to the terms of same.

"We note you say this order was taken prior to the time the resale arrangement went into effect. We will therefore ship the same immediately.

"It will be advisable until such time as you can see your way clear to sign the jobber's license agreement to advise your salesmen not to take orders for our goods, as it will save us the embarrassment of having to decline them.

"We of course do not wish you to quote us as having broken this rule—but are filling the order on the strength of your statement that the order was taken prior to the time the resale arrangement went into effect. 4

"Respectfully yours,
"THE CAHILL IRON WORKS.
Per F. H. C.,
President."

"FHC/P

1 By Mr. Grosvenor:

Q. Are you able to get the goods of the Cahlll Iron Works to day?

A. No, that is, we cannot get them directly; we can purchase them from somebody on the inside.

Q. You mean you cannot get them from the manufacturer? A. No, sir; we cannot.

Q. Indirectly you mean you buy from other jobbers?

A. By through a third jobber.

Q. What price do you pay him? A. The resale prices.

Q. That is the price at which the jobber has to sell the
2 plumber? A. Yes, sir.

Q. That is, you, a jobber, if you buy—

A. (Interrupting): If we buy, we pay the same as the plumber pays.

Q. But your trade is with plumbers? A. Yes.

Q. This conference which began in the morning and lasted until eight o'clock, were you all present during the entire conference? Was Mr. Torrance there the entire time?

A. No, there were two rooms there and some times Mr. Torrance would be in one room and some times in another;
3 and some times Mr. Kelly would talk to the jobbers and some times Mr. Wayman would come in.

Q. Weren't you ever all together?

A. I think we were together at the start and at the finish.

Q. Do you mean you were together in mind or in place?

A. In place.

Q. During the time you were apart in place, how were you doing it?

A. The jobbers were conferring among themselves and with Mr. Kelly at times, and then some times they would
4 confer and call in Mr. Wayman and Mr. Torrance with Mr. Wayman.

Q. Then Kelly was trying to keep you from signing?

A. Yes.

Q. And Wayman and Torrance were trying to get you to sign? A. Yes.

Re-cross examination by Mr. Noble:

Q. You say you can get goods, sanitary enameled iron ware goods through a third party? A. Yes, sir.

Q. What is the name of the firm that you deal with in that manner? 1

A. If it is not necessary, I would rather not give that name, but I will if it is necessary.

Mr. NOBLE: Well, I will not press the witness.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

FRED H. BOARDMAN, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows. 2

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. What is your business?

A. Manufacturers and jobbers of plumbers' supplies.

Q. Where are you located?

A. I am located in Brooklyn.

Q. What company are you connected with?

A. Ronalds & Johnson Company.

Q. What is your position? 3

A. I am Secretary and General Manager.

Q. And the business of Ronalds & Johnson is jobbers of plumbing supplies? A. Manufacturers and jobbers.

Q. As jobbers of plumbing supplies you handle sanitary enameled iron ware? A. Yes, sir; we do.

Q. Do you manufacture sanitary enameled iron ware?

A. We do not.

Q. As far as sanitary enameled iron ware is concerned, you only act as jobbers? A. Yes, sir.

Q. Ronalds & Johnson have stores in what places?

A. Camden and Brooklyn and New York City and—

Q. Do you sell to the plumbers? A. Yes, sir. 4

Q. That is the sanitary enameled iron ware?

A. Yes, sir.

Q. Where are your customers located?

A. We sell everywhere; my trade is located principally in Hoboken, Jersey City and Philadelphia.

Q. You mean by your business, your branch?

A. Yes, sir.

Q. And your customers are located where?

A. In Union Hill and Jersey City, Hoboken and Philadelphia.

Q. Do you extend up into Connecticut?

A. Very little.

Q. And the Philadelphia branch?

A. Handles the South, and Camden and New Jersey.

Q. Your customers are located in other States than New York, New Jersey and Pennsylvania? A. Yes, sir.

Q. Do you ship orders from your store rooms to the plumbers?

A. Yes, sir; and we ship direct from the manufacturer to the plumber.

Q. You send your order to the manufacturer and he ships direct to the plumbers? A. Yes, sir.

Q. And you also ship from your warehouse?

A. Yes, sir.

Q. You have produced here certain contracts not executed but in blank, being similar to Government's Exhibit No. 11. About what time were these received by you?

A. Some time in June; they are dated, I think.

Mr. GROSVENOR: I offer these in evidence as Exhibit No. 19 for identification, and ask that it be marked. The first is a letter and contracts from McVay & Walker dated June 4, 1910, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter from McCrum-Howell Company dated June 6th, 1910, with the contracts attached containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter from the Humphryes Manufacturing Company dated June 6th, 1910, with contracts attached containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter from the Cahill Iron Works, dated June 1, 1910, with contracts attached, containing the sentence, "It is necessary for you to sign these contracts before we can sell you licensed sanitary enameled iron ware"; a letter and contracts from the Wheeling Enameled Iron Company, dated June 6th, 1910, containing the

sentence; "It is necessary for you to execute these con- 1
tracts before we can sell you licensed sanitary enameled iron ware"; a letter and contracts attached from the Kerner Manufacturing Company, dated June 3rd, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled iron ware"; a letter from the United States Sanitary Manufacturing Company, with contracts attached, signed by A. H. Cline, Jr., Secretary, dated May 31, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you 2
licensed sanitary enameled ware"; and a letter from the Standard Sanitary Manufacturing Company, dated June 4, 1910, with contracts attached, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware."

Papers referred to were then marked and filed as "Exhibit for Identification No. 19."

Mr. GROSVENOR: The witness has produced here a letter from the Standard Sanitary Manufacturing Company, dated June 11, 1910, and signed by F. J. 3
Torrance, which I offer in evidence as "Petitioner's Exhibit No. 222."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 222."

Mr. GROSVENOR: That letter reads as follows:

"Pittsburg, U. S. A., June 11, 1910.

Subject—Your order b-1380, our No. 24171-D.

"Messrs. Ronalds & Johnson Co.,
New York, N. Y.

"Gentlemen:— 4

"Referring to the above mentioned order dated May 31st and which reached us June 1st, we regret to advise that the same came to hand too late to enable us to do much with it on the basis of the special low prices of May 18th. However, we are furnishing you an assorted car of tubs at those prices, invoice for which under date of June 4th you will receive shortly from our Standard Works.

1 "As the re-sale arrangement is now operative, we would like to know if you desire us to cancel the balance of the order, B-1380, or make shipment of same at regular prices.

"Yours very truly,

"F. J. Torrance,

"FJT per B."

Q. Mr. Boardman, your Company, that is Ronalds & Johnson, is recognized as jobbers in the trade? A. Yes, sir.

Q. Your name appears in this book which is known as Petitioner's Exhibit No. 30? A. Yes, sir.

2 Q. Does that book contain the names of most of the jobbers in the United States? A. It is supposed to.

Q. Are you able to get the goods from the Standard Sanitary Manufacturing Company today? A. Not directly.

Q. Explain what you mean by that?

A. We buy from other jobbers.

Q. At what prices?

A. Jobbers prices and what we may be able to get later on.

Q. That is the jobbers price to the plumbers?

A. Yes, sir.

3 Q. That is, you jobbers buy from other jobbers at plumbers prices?

A. Yes, sir; but we may be able to get some discount later on.

Q. From whom? A. From whom we buy.

Q. And you are jobbers and sell to plumbers?

A. Yes, sir.

Q. Look at this list of defendant corporations and state with what companies your Company did business prior to June 1st, 1910?

4 A. The Standard Sanitary Manufacturing Company; the A. Weiskittel & Son Company; Barnes Manufacturing Company; Cahill Iron Works; Day-Ward Company; the Kerner Manufacturing Company; McVay & Walker; the McCrum-Howell; the United States Sanitary Manufacturing Company; the L. Wolff Manufacturing Company; and I think that is all.

Q. Are you able to get the goods directly from any of these companies today? A. We are not.

Q. Were you present at that meeting in Philadelphia about which Mr. Fleck testified? A. I was. 1

Q. Who called you there?

A. Why, we went at the request of Mr. Wayman.

Q. Who do you mean by "we"?

A. Mr. Fleck and myself.

Q. Did he telephone to you or write to you?

A. The original request was made verbally, person to person; we had a meeting, if I remember rightly, when we discussed the matter.

Q. Where was that meeting? A. In New York City.

Q. You and Mr. Wayman had the meeting? 2

A. Mr. Fleck, Mr. Wayman had a meeting at the Manhattan Hotel in New York City.

Q. Was anybody else there? A. I think not.

Q. Go on?

A. We simply discussed the matter of getting together, and we telephoned Mr. Torrance in Pittsburg.

Q. You telephoned to him?

A. Mr. Wayman telephoned; I talked to Mr. Torrance.

Q. On the phone? A. On the phone.

Q. About having a conference?

A. Yes, and at that meeting it was suggested that we should meet in Pittsburgh, but afterwards we were telephoned where to meet; I was telephoned to, I mean. 3

Q. By Mr. Wayman?

A. I don't know if it was Mr. Wayman or Mr. Fleck.

Q. When you telephoned from here to Mr. Torrance, what was the subject of the discussion?

A. Well, the main discussion was getting together and talking matters over.

Q. Do you mean having a conference? A. Yes, sir.

Q. At the meeting in Philadelphia, were you there from the morning until the night? 4

A. I was there from the morning until eight o'clock.

Q. You heard Mr. Fleck's testimony? A. Yes.

Q. Does his account agree with your views of the matter? A. Yes, practically so.

CROSS EXAMINATION BY Mr. NOBLE:

Q. You bought largely from the Iron City Manufacturing Company previous to June 1st, did you not? A. Yes.

1 Q. You still buy from them? A. Yes.
Q. Do you also buy from Kohler and Company?
A. Some very little.
Q. Do you buy from the Blairsville people?
A. Very little.
Q. From the Clymer Manufacturing Company?
A. Not since the first of June.
Q. The Clymer Manufacturing Company is not a licensed manufacturer?
A. I believe they are not running; I am not sure about that.
2 Q. You do not buy anything from them, then?
A. No, sir.
Q. Do you buy from Louis Lipp of Cincinnati?
A. No, not enameled iron ware.
Q. Does your trade extend out to the Pacific Coast?
A. Not in enameled iron ware.
Q. So you do not buy from the Washington Iron Works in Los Angeles? A. No.
Q. You are able to buy goods from the licensed manufacturers, I understood you to say, indirectly; is that correct? A. Yes, sir.
3 Q. Now, this meeting which Mr. Grosvenor has asked you about, which took place in Philadelphia was brought about by whom? A. Mr. Wayman.
Q. Was it Mr. Wayman who called up Mr. Torrance from the Manhattan Hotel, in Pittsburgh? A. It was.
Q. It was Mr. Wayman who asked you to come to the meeting? A. Originally, yes, sir.
Q. And it was Mr. Wayman who asked Mr. Torrance to come to the meeting over the telephone, as you have testified? A. Yes.
Q. The Counsel for the Government did not ask you
4 specifically about the Philadelphia meeting, so I will ask you just one question: I understood you to mean by your answer to their question the subject matter discussed at the Philadelphia meeting was, was it not, the signing by you and some other jobbers of the license agreement between you and Mr. Wayman? A. That was it; yes, sir.
Q. Does your Company do business in plumbing supplies in general? A. We do.

Q. What percentage of your business would you say the sanitary enameled iron ware business constituted?

A. I suppose ten or twelve per cent.

RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. You testified in your direct examination that in the Manhattan Hotel you talked with Mr. Torrance over the phone? A. Yes, sir.

Q. At Pittsburgh? A. Yes, sir.

RE-CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Wayman called him up? A. Yes, sir.

Q. And Mr. Wayman asked you to talk to him on the telephone, is that correct? A. Yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

1 HERBERT W. THORNDYKE, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. What is your business?

A. I am Treasurer of the F. W. Webb Manufacturing Company.

Q. Located where? A. Boston.

Q. What is their business?

A. Manufacturers and jobbers of plumbers' supplies.

2 Q. They handle sanitary enameled iron ware?

A. Yes, sir.

Q. Bathtubs and sinks? A. Yes, sir.

Q. You sell to the plumbers? A. Yes, sir.

Q. And buy from the manufacturer? A. Yes, sir.

Q. What states do you do business in?

A. Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut and New York States.

Q. You ship from your store house in Boston to these plumbers located in these various states which you have mentioned? A. Yes.

3 Q. And you send their orders to the manufacturers and have them shipped from the manufacturers to the customers? A. Yes, sir.

Q. Your Company is recognized as a jobber in the trade? A. Yes, sir.

Q. You appear in that book which is known as Petitioner's Exhibit No. 30? A. Yes, sir.

Q. Does that contain the names of the principal jobbers in the United States? A. As far as I know.

Q. Have you executed the license agreement?

A. No, sir.

4 Q. You were subpœnaed to produce certain papers; have you them with you?

A. I have no letters at all; there are just contracts and the letters that accompanied them.

Mr. GROSVENOR: I offer these letters and contracts as Exhibits No. 20 for identification.

Letters referred to were then marked and filed as "Exhibit No. 20" for identification, offered by the Petitioner.

Q. These are similar to Government's Exhibit No. 11, 1
that is, these contracts? A. Yes.

Q. And these were received by you on or about what time? A. Early in June.

Mr. GROSVENOR: There is a letter here from the United States Sanitary Manufacturing Company, dated May 31, 1910, and addressed to the F. W. Webb Manufacturing Company, signed by the United States Manufacturing Company, A. H. Cline, Jr., containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," with a contract attached thereto; also a letter from the Standard Sanitary Manufacturing Company, dated June 4, 1910, addressed to the Webb Company and containing the sentence, "It is necessary for you to execute both these contracts before we can sell you licensed sanitary enameled ware"; attached to said letter were the contracts from the Standard Sanitary Manufacturing Company; also a letter from the Kerner Manufacturing Company, dated June 6, 1910, and containing the sentence, "It is necessary for you to execute both of these contracts before we can sell you licensed sanitary enameled ware", with the contract attached thereto; also a letter and contract from the Day-Ward Company, dated July 8, 1910, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter from the Cahill Iron Works, dated June 1st, 1910, containing the sentence "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter from McVay & Walker, dated June 4, 1910, with contract attached, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; also a letter from the Wheeling Enameled Iron Company, with contract attached, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; and a letter and contract from the Humphryes

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3

4

1 Manufacturing Company, dated June 6, 1910, and containing this sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware."

Q. Has your Company executed a license agreement with any of these companies? A. No.

Q. Look at this list of corporation defendants and state which of those companies, if any, your Company did business with, prior to June 1st, 1910?

A. The Standard Sanitary Manufacturing Company; the Kerner Manufacturing Company and the United States
2 Sanitary Manufacturing Company.

Q. Are you able to get their goods today?

A. Not directly.

Q. When you say "not directly," you mean what?

A. That we cannot purchase them directly from the manufacturers of those goods.

Q. You buy them, however, from the jobbers; is that right? A. Yes, sir.

Q. At what prices? A. Resale prices.

Q. That is, you buy them the same as any plumber?

A. Yes, sir.

3 Q. Your business is what? A. Selling to plumbers.

Q. Were you present at this Philadelphia meeting that Mr. Fleck has testified about? A. Yes, sir.

Q. Were you there all day? A. Yes, sir.

Q. Was the account which he gave of that meeting, substantially correct as you remember it? A. Yes, sir.

Q. Have you seen Mr. Torrance at any other time since June 1st, in reference to executing a license agreement?

A. No, sir; I have seen him but not in reference to that matter.

4 CROSS EXAMINATION BY Mr. NOBLE:

Q. You are a large purchaser from the Iron City Manufacturing Company, are you not? A. Yes, sir.

Q. And have been for a number of years?

A. For several years past.

Q. Who else do you buy from at the present time besides the Iron City Manufacturing Company?

A. A little from Kohler.

Q. And those are the only manufacturers from whom you buy at the present time? A. Yes, sir. 1

Q. Yet you do buy goods from the so-called licensed manufacturer indirectly? A. Yes.

Q. What percentage of your business would you say that the sanitary enameled iron business constituted?

A. About fifteen per cent.

Q. Mr. Wayman asked you to come to the conference in Philadelphia, did he not?

A. Yes.

Q. He called you on the telephone? A. Yes, sir.

Q. And you went at his request? A. Yes, sir. 2

RE-DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Prior to June 1st, 1910, what was the extent of your business in sanitary enameled iron ware with the Standard Manufacturing Company? Approximately how much did it aggregate annually?

A. Well, have I got to answer that question—

MR. NOBLE: I object to it.

MR. GROSVENOR: If you object to disclosing your business affairs, I will not press it.

3

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

4

1 EDWARD W. HOTCHKISS, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Hotchkiss, what is your business?

A. We are jobbers of plumbing supplies.

Q. State the name of your company?

A. The Hotchkiss, Vail and Garrison Company.

Q. Located where?

A. 104 East 41st Street, New York City.

2 Q. What is your position? A. I am the President.

Q. Do you handle sanitary enameled iron ware, among other plumbers' supplies? A. Yes, sir.

Q. Where are your customers located?

A. In the Metropolitan District, and in Connecticut and in New Jersey.

Q. You sell to the plumbers? A. Yes.

Q. You were subpœnaed to produce certain documents here; have you them here?

A. That is all of the correspondence (indicating); I do not know whether that is what you require.

3 Q. Did you receive contracts from the various manufacturers of sanitary enameled iron ware on or about June 6, 1910, which were similar to Petitioner's Exhibit No. 11?

A. We did.

Q. Will you look at this Petition and state the names of some of the manufacturers of sanitary enameled iron ware with whom you did business prior to June 1, 1910?

A. There are only two, the Standard Sanitary Manufacturing Company and the Wheeling Enameled Iron Company.

Q. Did you refuse to sign that contract at that time?

A. We did.

4 Q. I show you a letter dated May 31, 1910, on the letterhead of the United States Sanitary Manufacturing Company and ask you if you received that letter at that time?

A. Yes, here is our receiving stamp (indicating).

Q. That letter contains this sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled iron ware;" the contract attached to that letter is the contract to which you referred?

A. Yes.

Q. Did the United States Sanitary Manufacturing Company refuse you goods after you refused to sign their contract? A. They did. 1

Q. You received a contract from the Standard Manufacturing Company similar to the one from the United States Manufacturing Company just referred to?

A. Yes, sir.

Q. Did you have objections to that contract?

A. We certainly did.

Q. And to certain terms of the re-sale arrangement?

A. Yes.

Q. Have you signed that agreement since? 2

A. We have.

Q. When did you sign it?

A. I don't know the date; I think it was in August.

Q. With what company?

A. With the Standard Sanitary Manufacturing Company and the United States Sanitary Manufacturing Company.

Q. With each of them? A. Yes.

Q. Did you receive from them permission to buy goods also from manufacturers not licensed?

A. Under certain conditions.

Q. What were those conditions? 3

A. Those conditions are enumerated in their correspondence there (indicating).

Q. Will you identify these (indicating), as letters written by you and received by you? A. Yes, sir.

Mr. GROSVENOR: Those letters have already been offered and marked as Petitioner's Exhibit No. 123 and No. 124, respectively.

Examination Suspended.

At this point a recess was taken until two o'clock. 4

After Recess.

EDWARD W. HOTCHKISS, resumed the stand for continuation of direct examination, and testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR (continued):

Mr. GROSVENOR: I now offer in evidence the letters

of June 23rd, 1910, that letter being on the letterhead of the United States Sanitary Manufacturing Company and signed by A. H. Cline, Jr., the letter of June 25th, 1910, also from the United States Sanitary Manufacturing Company and signed by A. H. Cline, Jr.; and the carbon copy of a letter addressed to the United States Sanitary Manufacturing Company, Pittsburgh, Pennsylvania, dated June 27th, 1910, and signed by the Hotchkiss, Vail and Garrison Company; also a letter from the United States Sanitary Manufacturing Company, addressed to the Hotchkiss, Vail and Garrison Company, signed by A. H. Cline, Jr., and dated July 11, 1910. I offer those letters and ask that they be marked and filed as "Petitioner's Exhibit Nos. 223, 224, 225 and 226" respectively.

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 223, 224, 225 and 226" respectively.

Mr. GROSVENOR: Those letters read as follows:

"Pittsburg, Pa., June 23, 1910.

"The Hotchkiss, Vail & Garrison Co.,
104 East 41st St.,
New York City, N. Y.

"Gentlemen:—

"We have received several orders from you lately, through our Mr. Ham, but as we have not received your signed resale agreement, we are not in a position to execute these orders, owing to the fact that our contract with Mr. E. L. Wayman, under whose patents we are now manufacturing our enameled ware, positively prohibits our accepting any orders from jobbers who have not signed the resale license agreement. We regret exceedingly to have to take this action, but have no alternative whatever in the matter as our contract with Mr. Wayman is very positive along these lines.

"Trusting that you will see your way clear to shortly send us your resale agreement properly ex-

cented, as we do not wish to delay you in making 1
shipment of any of these orders, beg to remain,

"Yours very truly,
"United States Sanitary Mfg. Co.,
"A. H. Cline, Jr.,
"A. H. C.-A. Secretary."

"Pittsburg, Pa., June 25, 1910.

"The Hotchkiss, Vail & Garrison Co.,
New York City, N. Y.

"Gentlemen:—

2

"Your two favors of the 24th received and carefully noted. Now, in regard to any orders that you placed with us before the 6th inst., your not signing the resale contract will, of course, have no effect on these orders, as we intend to fill these just as soon as possible, as same have been entered and will be shipped just as soon as it is possible for us to get them out, as we are not trying to work any hardship on any jobber and, of course, can make no rule or contract which is retroactive. We regret exceedingly the position that you feel you are forced to take in 3
regard to signing this resale contract, and before cancelling the orders which you have asked us to cancel, which we cannot fill until we receive this resale contract, we want to state to you that Peck Bros. & Co. signed this resale contract yesterday and as we understand it, you are doing business on very similar lines to the Peck Bros. Co. in your City, and thought this might possibly influence you somewhat in signing this contract. This practically puts all of the high grade people in your City on this same basis. The J. L. Mott people have signed, Peck Bros. and the
Nason Mfg. Co., also the Federal-Huber Co. We 4
appreciate very much the business that we have been getting from your firm and we would very reuletantly cancel these orders, as we feel that we would like your support in this movement, and believe that in the long run it is the very best thing that was ever inaugurated for the jobbers. In your case where you are getting equal or better than these prices, it seems to us that it is a great protection to you as it

1 will keep some of the small East side jobbers who are in the habit of butting in on these good contracts of doing so in the future. We wish that before we cancel these orders which you have sent us, that you will reconsider this matter and let us hear from you further as we believe that possibly the action that Peck Bros. have taken will influence you in your action regarding this contract.

"Yours very truly,
"United States Sanitary Mfg. Co.,
"A. H. Cline, Jr.,
2 "AHC-R. Secretary."

"June 27, 1910.

"Mess. U. S. Sanitary Co.,
Pittsburg, Pa.

"Gentlemen:—

"Answering yours of the 25th, at the hands of your Mr. Cline, would say that we regret exceedingly to be in the position which we have been placed in, but we do not feel that we can conscientiously sign this
3 agreement where we have to adhere to your ruling on lump sum prices. We have never yet cut prices of tubs, and as we do not sell bath tubs or lavatories separately, without complete trimmings, it means a complete revolution of our billing system, and an invasion of the privacy of our business to such an extent that the hardship exists, as much as you may regret its imposition. The fact that Peck Bros. & Co. have signed the resale agreement would have no bearing as far as we are concerned, if we believe we are right. They have a large jobbing trade through-
4 out New England, where they sell all manner of plumbing supplies in competition with the other jobbers. This feature of their business is not akin to any of ours.

"Very truly yours,
"THE HOTCHKISS, VAIL & GARRISON CO."
"EWH

"Pittsburg, Pa., July 11, 1910. 1

"The Hotchkiss, Vail & Garrison Co.,
New York City, N. Y.

"Gentlemen:—

"Again referring to your Mr. Hotchkiss favor of the 27th ult. in reference to your signing the resale contract, beg to state the writer presented your letter to the Committee that met with Mr. Wayman on last Friday and went into this matter in detail, but owing to the fact that J. L. Mott has agreed to cut out all lump bids and bill his enameled ware separately, 2 the Committee did not think they could do anything in this matter at the present time. We are in hopes that this adjustment can be made later on but for the present it will be necessary for the jobber that signs the resale agreement contract to bill all of his enameled ware separately. We did all that we could to have this matter arranged satisfactorily for you but we were turned down by the Committee for the present. We would like mighty well to see your signature to a contract as we certainly deplore the fact that we cannot ship you goods that you have 3 ordered from us, but as we stated in our former letter we have no alternative whatever as our contract with Mr. Wayman is very binding.

"Trusting that you will reconsider this and go into the matter a little further and see that if you do not think on a whole this would be a benefit to you while it may be hurtful in a few cases and let us hear further from you, beg to remain,

"Yours very truly,
"United States Sanitary Mfg. Co.,
"A. H. Cline, Jr., 4
"A.J.-R. Secretary."

BY Mr. GROSVENOR:

Q. Did you receive these letters? A. Yes, sir.

Q. Here is also a letter on the letterhead of the United States Sanitary Manufacturing Company, dated May 31, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed

sanitary enameled ware"; the contract which went with that was similar to the contract known as Petitioner's Exhibit No. 11?

A. Yes, sir; the Jobber's License Agreement.

Mr. GROSVENOR: Here is also a letter from the Standard Sanitary Manufacturing Company, dated June 4, 1910, and addressed to you, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware."

I now offer two letters, one addressed by you to the Standard Sanitary Manufacturing Company and dated June 24, 1910, and the other purporting to be the reply from the Standard Sanitary Manufacturing Company, under date of June 27, 1910. I offer those letters in evidence as "Petitioner's Exhibits Nos. 227 and 228" respectively.

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 227 and 228," respectively.

Mr. GROSVENOR: Those letters read as follows:

"June 24, 1910.

"Messrs. Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"Gentlemen:—

"We have not yet signed the resale license agreement, which you forwarded us, as there are many conditions about it which conflict with our best interests, as we see them. We would thank you please to let us know the status of our orders placed with you after June 6th, as we have had no acknowledgement of their receipt from you. We take it that orders placed with you previous to June 6th would not be subservient to the conditions attaining after June 6th, and we would appreciate your very prompt reply to us, of our interpretation, as we must base our arrangements on your decision.

Thanking you in advance for your courtesy and expedition, we are

Very truly,

"THE HOTCHKISS, VAIL & GARRISON CO."

"EWH"

"Pittsburg, U. S. A., June 27, 1910. 1

"Hotchkiss, Vail & Garrison,
New York City, N. Y.

"Gentlemen:—

"Answering your letter per E.W.H. of June 24th, would say that we have not entered orders dated subsequent to June 4th from any concern who has not entered into the resale agreement.

"Our license from the owner of the patents and under which we act arbitrarily fixes what we should do in this matter. 2

"I sincerely hope, for our mutual good, that you will see your way clear to sign the agreement as some two hundred fifty (250) other reputable jobbers in the United States have already signed.

"Yours very truly,
"Francis J. Torrance,
"FJT V. P."

Mr. GROSVENOR: Here is another letter dated July 14, 1910, on the letterhead of Edwin L. Wayman, and signed by him, which I offer in evidence as "Petitioner's Exhibit No. 229." 3

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 229."

Mr. GROSVENOR: That letter reads as follows:

"July 14, 1910.

"Hotchkiss, Vail & Garrison,
New York, N. Y.

"Gentlemen:—

"Referring to paragraph 10 of the Jobber's License Agreement, would state that if you will execute this agreement I will authorize you to purchase until further notice, Kohler goods on the following basis: 4

"That you will stock and push Licensed Ware and handle only such Kohler goods as are absolutely required to fill orders covered by specifications, etc., in which Kohler's goods are specified. That you will furnish me a monthly report of your total purchases

1 from Kohler each month and sell his goods at the prices established in the re-sale sheets.

"I believe the re-sale prices will result in a great benefit to you as a Jobber, and that it will be to your interest to purchase Licensed Ware and support the Licensed Manufacturers in every respect as the results to be gained are mutual.

"Yours very truly,

"Edwin L. Wayman."

BY MR. GROSVENOR:

2 Q. Will you look at this letter (indicating); was it about that time that you signed a contract with the Standard Sanitary Manufacturing Company?

A. No, it was in August.

Q. In August?

A. Yes, I think the 29th; just prior to the 1st of September.

Q. The contract which you signed is similar to those contracts and to Petitioner's Exhibit No. 11? A. Yes.

Q. You have produced certain contracts similar to Petitioner's Exhibit No. 11, they being as follows: From
3 the Humphryes Manufacturing Company, the Wheeling Enameled Iron Company, McVay & Walker, with letters attached, in each of which letters the statement is contained, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware." These contracts were received about what time?

A. About the 6th of June, possibly received on the 7th, as they are dated the 6th.

MR. GROSVENOR: This (indicating) is a letter dated August 25th, from the United States Sanitary Manufacturing Company, which I offer in evidence
4 as "Petitioner's Exhibit No. 230."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 230."

MR. GROSVENOR: That letter reads as follows:

"Pittsburg, Pa., August 25, 1910. 1

"The Hotchkiss, Vail & Garrison Co.,
New York City, N. Y.

Attention to Mr. Hotchkiss.

"Gentlemen:—

"In reply to your favor of the 24th, we anticipated a letter of this kind and the writer yesterday talked the matter over with Mr. Torrance and told him the arrangements that we had made with you and of course, as this has been done with Mr. Wayman's 2 permission, Mr. Torrance agreed that it was satisfactory, and it will be entirely satisfactory for you to sign a license agreement with the Standard Sanitary with the understanding that you have this same privilege as granted by ourselves, for as a matter of fact, the privilege is granted by Mr. Wayman, not by either of the Companies individually. We also returned to Mr. Ham yesterday the letter which Mr. Wayman got out for you permitting you to buy some Kohler ware, and Mr. Ham will turn this over to you as Mr. Wayman has signed same properly. 3

"Thanking you for having taken this matter up with us, beg to remain,

"Yours very truly,
"United States Sanitary Mfg. Co.,
"A. H. Cline, Jr.,
"AHC-R. Secretary."

CROSS EXAMINATION BY MR. NOBLE:

Q. Mr. Hotchkiss, are you a general jobber of plumbing supplies? A. Not a complete line.

Q. What lines are you in? 4

A. Just complete fixtures; we do not have much of the rough materials, such as pipes and fittings.

Q. In other words, if I understand you correctly, you mean you handle the fittings as far as they go to make up a bath room, such as the bath tub and the lavatory?

A. Yes, sir.

Q. But not with the pipings?

A. Yes, that is the exposed pipings in nickel.

1 Q. But not the pipings that go through the house?
A. No, sir.
Q. What you deal in is what is known practically as plumbers' fixtures in the house, are they not?
A. Yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

ERASTUS E. HAFF, a witness of competent age, produced, on behalf of the Petitioner, being first duly sworn,
2 testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Haff, what is your business?
A. Plumbing supplies.
Q. Where are you located? A. 245 Ninth Avenue.
Q. What is the name of your Company?
A. F. N. DuBois and Company.
Q. Your Company are jobbers of sanitary enameled iron ware such as bath tubs and lavatories and so forth?
A. We are.
3 Q. You sell your goods to the plumber? A. We do.
Q. You are recognized in the trade as jobbers?
A. We are.
Q. And your name appears in the blue book which is known as Petitioner's Exhibit No. 30? A. It does.
Q. Does that book contain the names of the principal jobbers in the United States? A. I think it does.
Q. Where are your customers principally located?
A. New England and the middle States.
Q. And you ship from your store house to the plumbers?
A. We do.
4 Q. And also have orders shipped from the factories?
A. In some cases.
Q. But generally you ship from your stock? A. Yes, sir.
Q. Will you look at the list of corporation defendants and state with what companies you did business prior to June 1st, 1910? A. The Standard Sanitary Manufacturing Company, A. Weiskittel & Son Company; Cahill Iron Works; the Day-Ward Company; the Kerner Manufacturing Company and the McCrum-Howell Company.

Q. Have you executed a license contract with any of those companies? A. We have not. 1

Q. You have been subpœnaed to produce certain documents; have you those with you? A. I have them.

Q. Will you let me have them? A. These are all.

Mr. GROSVENOR: The witness has handed me a letter dated June 9, on the letterhead of the Standard Sanitary Manufacturing Company and signed by Francis J. Torrance, also a reply to the same addressed to Mr. Francis J. Torrance, dated June 10, 1910, and signed by F. N. DuBois & Company. I offer those letters in evidence as "Petitioner's Exhibits Nos. 231 and 232" respectively. 2

Letters referred to were then marked and filed as "Petitioner's Exhibit Nos. 231 and 232" respectively.

Mr. GROSVENOR: Those letters read as follows:

"Pittsburg, U. S. A., June 9, 1910.

"Mr. E. E. Haff,
Of F. N. DuBois & Co.,
New York City, N. Y.

"Dear Sir:— 3

"I have just wired you relative to your order 4911. It is going to you today to New York as per my advices and you can charge back the freight.

"I have had the packages marked with the respective names as per order.

"I am anxiously awaiting your signature to the re-sale agreement. I have been busy here two whole days and up to eleven o'clock one night and ten o'clock another night, signing up these papers. I just had a message from Chicago where the Chicago and other Western jobbers held a meeting yesterday 4 that they were a unit on the re-sale agreement and have signed and forwarded the papers. There was some slight misunderstanding or disagreement which has been explained and settled.

It is the best scheme I know of for regulating and making profitable the jobbing business and the only legalized method that I am aware of. I trust you will not make us wait long or embarrass us by

declining orders in the future for we positively will not deviate from our rule. We entered into this agreement in good faith and the proper spirit on the theory that it was beneficial to the jobbing trade and on the positive assurance of at least 95% of our customers that they wanted such an agreement and I must admit that the manner and volume in which the papers have come before me for signature certainly indicate the same opinion.

"Yours very truly,

"FJT "Francis J. Torrance."

"June 10, 1910.

"Mr. Francis J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"Dear Mr. Torrance:—

"The writer is in receipt of your favor of the 9th inst., and we wish to thank you at this time for the many favors we have received from you in the past, and particularly for the favor you did us last week, in taking care of us at old prices on 1300 and odd Nemo tubs, sold on contracts, so we did not have a loss on these.

"Referring to the contract which you have sent us, we would not care to sign this for several reasons. In the first place, the rebate scheme and the resale price are both distasteful to me. We have to carry our customers on new work from three to five months, and on the resale proposition we would have to sell our goods within 5% of cost, and the other two fives would be in the hands of the manufacturers for seven months, taking this much capital out of our business for a long length of time.

"Also we would have no chance in competing with such people as Colwell Lead Co., who are manufacturing jobbers. We do not know what restrictions are placed on them to make them forfeit a large sum of money in case they were compelled to buy some goods from an outside manufacturer, or should they cut the resale price. Also in reference to the resale price, from past experience, we have no confidence

in the jobbers in New York City maintaining this resale price absolutely. 1

"Furthermore, while you give us your assurance that this entire plan is perfectly legal, at the same time we have never yet known half a dozen lawyers to agree on any one thing, and we don't want to take any chances of sending either Mr. DuBois, who is over eighty years of age, Mr. Blauvelt, or myself to Atlanta for fifteen years, more or less.

"Taking the whole scheme from the start to finish, in its entirety, it is distasteful to us, so we have decided we will take the tubs which you kindly protected us on, and fill the existing contracts which we have on our books, and practically discontinue, for the time being, pushing the sale of enamel ware. We will lend all our efforts to pushing the sale of lead goods which we manufacture, and other lines which we may be able to handle legitimately as independent business men. 2

"Very truly yours,

"F. N. DuBois & Co."

"Hoping our pleasant personal relations will continue as in the past, we remain, 3

"Very truly yours,

"EEH/M "F. N. DuBois & Co."

By Mr. Grosvenor:

Q. At the beginning of June, did you receive a series of contracts similar to Petitioner's Exhibit No. 11, from the different manufacturers with whom you had been doing business? A. We did.

Mr. Grosvenor: The witness has produced a letter from the Humphryes Manufacturing Company, dated June 6, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; attached to that letter were contracts in duplicate; also a letter from the Barnes Manufacturing Company, dated June 11, 1910, and stating "Please sign the two enclosed agreements and return them to yours truly, Jos. Kessel"; also a letter and contract 4

from the Wheeling Enameled Iron Company, dated June 6, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; letter and contract from A. Weiskittel & Son Company, dated May 31, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; letter and contract from McVay & Walker, dated June 4, 1910, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; a letter and contract from the United States Sanitary Manufacturing Company, Dated May 31, 1910, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; letter and contract from the Cahill Iron Works, dated June 1, 1910, and containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; letter and contract from the McCrum-Howell Company, dated May 28, 1910, the letter containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; also a letter from the Standard Sanitary Manufacturing Company, dated June 4, 1910, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware"; I offer them as Exhibit No. 21, for identification.

Letters and contracts referred to were then marked and filed as "Exhibit No. 21 for identification."

BY MR. GROSVENOR:

Q. A similar contract came with that letter from Mr. Torrance of the Standard Sanitary Manufacturing Company? A. Yes.

Q. Are you able to procure the goods of these manufacturers who forwarded to you these different license contracts? A. Not from them.

Q. You obtain them from jobbers? 1
A. Yes, get them through jobbers.
Q. At what prices? A. Plumbers' prices.
Q. And then sell them to the plumbers?
A. Yes, sir; at plumbers' prices.
Q. And your business is that of— A. Jobbers.
Q. There is not much in it for you, then? A. No, sir.

Mr. GROSVENOR: I offer in evidence a letter dated June 26, 1910, on the letterhead of Edwin L. Wayman, and signed by him and addressed to the witness, as "Petitioner's Exhibit No. 233."

Letter referred to was then marked and filed as 2
"Petitioner's Exhibit No. 233."

Mr. GROSVENOR: That letter reads as follows:

"June 26, 1910.

"Mr. E. E. Haff,
c/o F. N. DuBois & Co.,
New York, N. Y.

"Dear Mr. Haff:—

"I am in receipt of copy of quotations sent out by you under date of June 20th, the prices in which 3
are considerable below the established market. I presume that you are aware that there is no disposition on the part of the Licensed Manufacturers to start a cut market, which would not do any one any good, but if the prices you are making continue they will be forced to protect themselves with their trade. I would like to have your co-operation in the Resale Plan, which I believe is to the Jobbers' benefit, and I will be glad to have some expression from you as to your intentions in the matter.

"With kind personal regards, I am, 4
"Yours very truly,
"Edwin L. Wayman."

CROSS EXAMINATION BY Mr. NOBLE:

Q. With what firm are you connected?
A. F. N. DuBois and Company.
Q. Is that a corporation or partnership?
A. Partnership.

1 Q. Do you buy goods from the Iron City Manufacturing Company? A. We do not.

Q. Do you buy goods of J. M. Kohler and Sons Company? A. We do.

Q. How long have you been buying from Kohler and Sons? A. Since about the first of June.

Q. Did you buy anything from them before that?

A. Yes, some, but not much.

Q. Did you ever buy any from the Iron City Manufacturing Company before that?

A. Not in any volume, for the last couple of years.

2 Q. Before that you did business with them of considerable volume? A. Up until two years ago, yes.

Q. What is the nature of your business?

A. Plumbing supplies, principally.

Q. What percentage of that business does the sanitary enameled iron ware constitute?

A. I should say about fifteen per cent.

Q. You buy your sanitary enameled iron ware goods from J. M. Kohler Sons Company? A. Yes, sir.

Q. And the others you get from the licensed manufacturers so called, indirectly, is that correct?

3 A. That is correct.

Q. Are you interested in any of the licensed manufacturers? A. I am not.

Q. Is anybody connected with you interested in them?

A. Not yet.

Q. Well, what is the status of the negotiation?

A. There is no relation as yet.

Q. What is the status of the negotiation?

Mr. GROSVENOR: What Company does he refer to?

Mr. NOBLE: Which one of the licensed manufacturers do you refer to?

4 Mr. GROSVENOR: I don't think he has referred to any.

Mr. NOBLE: Yes, he has.

THE WITNESS: No, I have not. What was the question that was asked?

The stenographer then read the cross question.

Mr. NOBLE: What did you mean when you said, "not yet" in response to my question as to what the

relation between you and anybody connected with any of the licensed manufacturers was? 1

A. Well, we are thinking of buying an interest.

Q. In which concern?

A. The Kerner Manufacturing Company.

Q. Where is their place? A. Zelienople.

Q. They are one of the licensed manufacturers, are they not? A. They are.

Q. Has your firm or the members of it any relationship with any other jobbers of plumbing supplies?

A. Not as a firm.

Q. Are any of the members of your firm connected with any other firm? 2

A. I, personally, hold an interest in another corporation.

Q. Is that firm a licensed jobber? A. It is.

Q. And that is how you get the licensed goods?

A. We get them through them; yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

3

FRED H. BOARDMAN, a witness heretofore produced and sworn, resumed the stand and testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR (continued):

Q. You just stated to me that you wanted to correct your testimony, did you not?

A. Yes, as to buying goods from the manufacturers after the time when that license agreement was put out.

Q. That is after June 1st? A. After June 1st.

Q. As to which manufacturers?

A. The Standard Sanitary Manufacturing Company and the Cahill Iron Works and the Kerner Manufacturing Company or, in fact, I might say, all the manufacturers. 4

Mr. NOBLE: What are you correcting?

A. (Continuing): The feature is this: At that meeting in Philadelphia—

Mr. NOBLE: On June 29.

A. (Continuing): Pending the decision of Mr. John A.

Kelly of the Iron City Manufacturing Company—pending his deciding whether he would go into this arrangement or not—we were given the privilege from Mr. Wayman of getting whatever goods we wanted from the licensed manufacturers and they did give us some goods for a week or ten days. Some time after that we purchased a bill goods from the Kerner Manufacturing Company at our Brooklyn store. We had no order for them at our Brooklyn store, but our New York store had an order for several carloads, and we considered that the shipment they made to us applied against that other order, although it really did not.

BY MR. GROSVENOR:

Q. That order which Kerner got was sent in before June 1st? A. Yes, the original order was.

Q. The order for the two carloads was sent in before June 1st? A. Yes, sir.

CROSS EXAMINATION BY MR. NOBLE:

Q. Then, in addition to your testimony of this morning, you want to make the statement on the record that following the Philadelphia meeting to which you testified—

A. Yes, sir.

Q. Various licensed manufacturers supplied you or your company with the goods? A. Yes, sir.

Q. That is sanitary enameled iron ware goods?

A. Yes, sir.

Q. For a week or ten days afterwards? A. Yes, sir.

Q. So you mean to say that you got these additional sanitary enameled iron ware goods from the licensed manufacturers? A. Yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

EDWARD T. DAVIS, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows. 1

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Mr. Davis, what is your business?

A. Plumbing supplies.

Q. What company are you connected with?

A. The New England Plumbing Supply Company of Springfield; I have another store in Boston, the Cambridge Supply Company.

Q. You are jobbers? A. Yes, sir. 2

Q. And you deal in sanitary enameled iron ware goods?

A. Yes, I do.

Q. Do you sell to plumbers? A. I do.

Q. Where are your customers located?

A. Practically throughout New England.

Q. You ship from your stock to them? A. Yes.

Q. Also on orders sent direct to the manufacturers?

A. Yes, sir.

Q. Will you look at this list of corporation defendants and state what manufacturers you did business with prior to June 1, 1910? 3

A. The Standard Sanitary Manufacturing Company; the Day-Ward Company; the McCrum-Howell Company; the Wheeling Enameled Iron Company—I think that is all.

Q. Did you do business also with certain of the manufacturers, the so-called independent, whose names appear on page 10 of the Petition?

A. Yes, I purchased from the Iron City Manufacturing Company.

Q. You have been requested on subpœna to produce certain papers; have you them with you?

A. A very few; the others I have destroyed; I did not save them all. 4

Q. You produce a jobber's license agreement similar to Government's Exhibit No. 11. Did you receive a copy of that from any of these manufacturers which you have mentioned?

A. Yes, all with the exception of the Iron City Manufacturing Company; I did not receive any from them.

Q. Were there letters attached like this one of the Standard Sanitary Manufacturing Company, containing

1 this sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware?" A. There were.

Q. Have you executed a contract with any of these manufacturers? A. I have not.

Q. Are you able to get the goods of any of them today?

A. Not direct from them; no, sir.

Q. How do you get them?

A. I have to get them from another jobber if I get them at all.

Q. And if you get them that way, what prices do you
2 pay? A. Plumbers' prices.

Q. And you sell to whom? A. The plumbers.

Q. At what prices?

A. As a rule at the prices at which they billed them to me.

Q. Do you know Mr. Wayman, the defendant in this case? A. No, I do not.

CROSS EXAMINATION BY Mr. NOBLE:

Q. How long have you been doing business with the Iron City Manufacturing Company?

3 A. I should say two or three months previous to June 1st.

Q. Do you do business with J. M. Kohler Sons Company?

A. I do.

Q. With the Blairsville Enameled Iron Ware Company?

A. No.

Q. You never have done any? A. Never have.

Q. Or with the Clymer Manufacturing Company of Indiana? A. No.

Q. You never have? A. No, sir.

Q. Or with the Louis Lipp Company of Cincinnati?

A. No, sir.

4 Q. Or with the Washington Iron Works of Los Angeles, California? A. No.

Q. Is your business a general business in plumbers' supplies? A. It is.

Q. What percentage of that business does the sanitary enameled iron ware business constitute?

A. I should say about twenty-five per cent.

Q. You are not doing business with the Standard Sanitary Manufacturing Company, the Day-Ward Company,

the McCrum-Howell Company or the Wheeling Enameled Iron Company? A. No, not in enameled iron ware. 1

Q. You get goods manufactured by those companies, however, if you need them? A. If I have to; yes, sir.

Q. You get those goods from other jobbers who can buy from them? A. Yes, sir.

Q. What your arrangements are you do not care to state?

A. That is all the arrangements I have; there is nothing in it for me. I do not take any more business than I have to.

Q. Your business now in sanitary enameled iron ware is only with the Iron City Manufacturing Company and the J. M. Kohler Sons Company? 2

A. Only Kohler; the Iron City Manufacturing Company cut me out.

Q. Why?

A. Because they made arrangements with some other concern in the East to handle their product, and because of that I was thrown down.

Q. You say that about the 6th of June or early in June you received copies of these contracts and letters from the Standard Sanitary Manufacturing Company, the Day-Ward Company, the McCrum-Howell Company and the Wheeling Enameled Iron Company; is that correct? A. Yes, sir. 3

Q. Those are companies with whom you have previously done some business? A. Yes, sir.

Examination of witness concluded and signing of deposition waived by agreement of counsel for the respective parties.

JOHN A. MURRAY, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows. 4

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Mr. Murray, what is your business?
A. Plumbers' supplies.
Q. What company are you connected with?
A. John A. Murray and Company.
Q. Do they handle sanitary enameled iron ware?
A. Yes, sir.

1 Q. Are they jobbers? A. Yes, sir.

Q. And sell to the plumbers? A. Yes, sir.

Q. What is your address?

A. 310-312 West Thirty-ninth Street; New York.

Q. Your customers are located where?

A. In New York, Connecticut, New Jersey and Pennsylvania.

Q. You ship from your storehouse or warehouse to them? A. Yes, sir.

Q. And you send orders to factories and have shipments made from them to the plumbers?

2 A. In carload lots; yes, sir.

Q. Are you recognized in the trade as jobbers?

A. Yes, sir.

Q. Does your name appear in that book which is known as Petitioner's Exhibit No. 30, as a jobber?

A. I have not seen that, but I assume that it is.

Q. Does that book contain the names of the principal jobbers in the United States? A. Yes, sir.

Q. Your name appears there on page 21 (indicating), does it not? A. Yes, sir.

Q. Will you look at this list of manufacturers of sanitary enameled iron ware, being the corporation defendants
3 in this case, and state with what manufacturers you did business prior to June 1st, 1910?

A. The Standard Sanitary Manufacturing Company; the Cahill Iron Works; the Humphryes Manufacturing Company; and the United States Sanitary Manufacturing Company.

Q. I am referring, you understand, to the sanitary enameled iron ware goods entirely? A. Yes, sir.

Q. You were subpœnaed to produce certain papers; have you them with you? A. Yes, sir.

Papers referred to were then handed to counsel.

4 Q. You have produced certain contracts which are similar to Petitioner's Exhibit No. 11, they being proposed jobber's license agreements; did you receive these early in June? A. Yes, sir.

Mr. Grosvenor: I offer these for identification as Exhibit No. 22.

Papers referred to were then marked and filed as "Exhibit for identification No. 22."

Mr. GROSVENOR: The first is a letter from the 1
Standard Sanitary Manufacturing Company, dated June 4, 1910, and signed by Mr. F. J. Torrance, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," with contracts attached; a letter from the Humphryes Manufacturing Company containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," with contract attached; a letter from the Kerner Manufacturing Company, dated June 3, containing the sentence, "It 2
is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," with the contracts attached; a letter from the United States Sanitary Manufacturing Company, dated May 31, 1910, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," with contracts attached; a letter from the Cahill Iron Works, dated June 1, 1910, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," with 3
contracts attached; a letter from the Wheeling Enameled Iron Company, dated June 6, 1910, containing the sentence, "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," with contracts attached; a letter from the Barnes Manufacturing Company, dated June 11, reading, "Please sign the two enclosed agreements and return them to yours truly, Jos. Kessel"; a letter from McVay & Walker, dated June 4, 1910, and containing the sentence, "It is necessary for you to execute these contracts be- 4
fore we can sell you licensed sanitary enameled ware," with contracts attached; a contract from the Day-Ward Company, without a letter, the contract being dated October 15, 1910; and a letter which I also offer as part of the same Exhibit No. 22, being dated June 3, 1910, on the letterhead of Edwin L. Wayman and addressed to the jobbing trade, with a copy of the Jobber's License Agreement attached thereto.

1 Q. Did all those come to you? A. Yes, sir.

Q. Did you execute a license agreement? A. No, sir.

Q. Are you able today to obtain the goods of any of these manufacturers who sent you these contracts?

A. No, sir.

Q. How long has your Company been in business?

A. Twelve years.

Q. Do you know Edwin L. Wayman?

A. I know of him, yes.

Q. Do you know him?

A. I know him personally, yes.

2 Q. Did you ever have any discussion with him with reference to these license agreements? A. No.

CROSS EXAMINATION BY Mr. NOBLE:

Q. You buy goods today from whom, Mr. Murray?

A. We buy chiefly from the Iron City Manufacturing Company.

Q. That is the Company of which Mr. Kelly is President, is it not? A. Yes, sir.

Q. You also buy from the Kohler Company?

A. Yes, sir.

Q. And the Clymer Company? A. No, sir.

3 Q. The Kerner Manufacturing Company? A. No, sir.

Q. The Blairsville Company? A. No, sir.

Q. You do not do business with any of those companies?

A. No, sir.

Q. Does your business extend out West? A. No.

Q. So you do not buy goods of Louis Lipp? A. No, sir.

Q. Nor of the Washington Iron Works of California?

A. No, sir.

Q. And you say you are not buying from the Cahill or Standard or Humphryes or United States Manufacturing Companies? A. No, sir.

4 Q. Do you buy those goods occasionally from other sources? A. Yes, sir.

Q. Through—

A. (Interrupting): Through licensed jobbers.

Q. Are you interested in any licensed jobber company or partnership? A. No, sir.

Q. Is yours a partnership or a corporation?

A. Partnership.

Q. Engaged in the general plumbing supply business?

A. Yes, sir. 1

Q. What percentage of your total business would you say the sanitary enameled iron ware business constituted?

A. About seventeen per cent., approximately.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

FRANK J. McGUIRE, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows. 2

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Mr. McGuire, what is your business?

A. Contracting plumbers.

Q. You install such things as sanitary enameled iron ware, bathtubs, sink and lavatories? A. Yes, sir.

Q. Did you have a contract for doing the work for that place—what is the name? A. Valhalla.

Q. What is the name of the building?

A. The Jennie Clarkson Home for Girls.

Q. Do you, as a plumber, buy your goods from the jobber? A. Yes, sir. 3

Q. And then you install them? A. Yes, sir.

Q. Did you have a contract for putting in the bathtubs and sanitary enameled iron ware in that Home? A. Yes.

Q. To what jobber did you go to obtain your supply of bathtubs for the Jennie Clarkson Home for Girls?

A. To the Central Plumbers Supply Company.

Q. Of what city? A. Of your city.

Q. That is Mr. Hirschfeld's Company? A. Yes, sir.

Q. Did you go to anyone else?

A. I had a figure from the Peck Brothers.

Q. On whose goods? 4

A. The Standard Sanitary Manufacturing Company's bathtubs and lavatories.

Q. Did you accept their bid? A. No, sir.

Q. Did you accept that of the Central Plumbers Supply Company?

A. The bid of the Central Plumbers Supply Company was accepted; yes, sir.

Q. For whose goods? A. J. M. Kohler and Sons'.

1 Q. Now, did you have any discussion with Mr. Hirschfeld about the installation of the Standard Sanitary Manufacturing Company's goods? A. Yes, sir.

Q. Did Mr. Hirschfeld make a bid for the installation of their goods?

THE WITNESS: Of the Standard?

Mr. GROSVENOR: Yes.

A. Yes, sir.

Q. This was when?

A. Well, it was in the early part of June, I should say.

2 Q. If you have any papers there to refresh your recollection, you may look at them?

A. (Referring to memorandum): Yes, sir; the 4th of June.

Q. The 4th of June? A. Yes, sir.

Q. That bid was for the installation of Standard Sanitary Manufacturing Company's goods and accepted?

A. Yes, sir.

Q. And, did you get those goods? A. No, sir.

Q. What happened?

A. I notified the Central Plumbers Supply Company to

3 get ready the order for shipment and they notified me that they could not furnish me with the Standard Sanitary goods because I would have to have a new figure on the job. I came to New York and saw Mr. Hirschfeld and wanted to know why I could not have them and he said because—

Mr. NOBLE: I object to any conversation with Mr. Hirschfeld.

Q. What did he say to you?

A. He said I should call up the Standard people myself.

Q. Did you do so? A. Yes, sir.

Q. With whom did you speak?

4 A. Mr. Bassett was the man I had on the telephone and he told me to re-figure it.

Q. Was anything said about signing a contract?

A. No, sir; not to me.

Q. Whose goods did you finally put in?

A. The J. M. Kohler Sons Company's goods.

Q. Did Mr. Hirschfeld make a re-figuring for the Standard Sanitary's goods?

THE WITNESS: A re-figure for the Standard goods? 1
Mr. GROSVENOR: Yes.

A. No, sir; I told him there was no sense in it.

Q. Why not?

A. Because I had a set price and I could not go any higher and I was led to believe that it would go higher if it was re-figured.

Q. Did you re-figure it? A. No, not for the Standard.

Q. Then you got these Kohler goods?

A. Yes, sir; I asked the architect to go and look at them.

2

CROSS EXAMINATION BY Mr. NOBLE:

Q. You did not re-figure the price that you were willing to pay the Central Plumbers Supply Company? That is, Mr. Hirschfeld's Company, for Standard goods, did you?

A. I got another figure from Mr. Hirschfeld.

Q. You did not re-figure it as one of your jobs?

A. Yes, sir.

Q. I understood you to say that you did not?

A. Not for the Standard goods.

Q. That is what I asked you?

A. No, I did not; not for the Standard goods. 3

Q. So you don't know what figures you would have received from Mr. Hirschfeld for Mr. Marshall on Standard goods? A. I don't know; no, sir.

Q. When Mr. Hirschfeld made you a bid quoting Standard lavatories and bathtubs, you later substituted in place of that the Kohler, as I understand? A. Yes, sir.

Q. You never accepted his offer definitely as to Standard goods, did you? A. No, I did not.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties. 4

1 WILLIAM HODGE, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. What is your business, Mr. Hodge?

A. Contracting plumber.

Q. Do you buy sanitary enameled iron ware from jobbers? A. Yes, sir.

Q. And then install it? A. Yes, sir.

Q. State where you are located?

2 A. 15 East 3rd Street, Mt. Vernon, New York.

Q. Did you have a contract for installing the lavatories for the Westchester Lighting concern?

A. I did not have the contract with them; it was day's work.

Q. For whom? A. The Westchester Lighting Company.

Q. You were installing them for that Company?

A. For them; yes, sir.

Q. You were to buy the lavatories for them and put them in and then charge them for it, is that right?

A. Yes, sir.

Q. Any other sanitary enameled iron ware except

3 lavatories? A. No, sir.

Q. How many were there?

A. Nine all told; two, three and four sections.

Q. To what jobber did you go?

A. To the Central Plumbing Supply Company.

Q. That is Mr. Hirschfeld's Company? A. Yes, sir.

Q. In New York City? A. Yes, sir.

Q. When was that? A. Somewere around in May.

Q. Did he make a bid? A. Yes, sir.

Q. Did you accept that bid? A. Yes, sir.

Q. Now, what Company's goods were they?

4

THE WITNESS: Which, the ones I put in?

Mr. GROSVENOR: No, the ones he was going to furnish you.

A. Oh, the Standard Sanitary Manufacturing Company's goods.

Q. And you accepted his bid to give those goods to you, is that right? A. Yes, sir.

Q. Was the building ready to receive them at that time?

THE WITNESS: Ready to receive the goods? 1
MR. GROSVENOR: Yes, for you to put them up.

A. Yes, sir.

Q. Did you get them? A. No, sir.

Q. Why, what happened?

A. Well, he said he could not get them because he would not sign an agreement with the Standard Sanitary Manufacturing Company.

MR. NOBLE: I move that that be stricken out.

Q. Did you see any officers of the Standard Sanitary Manufacturing Company? 2

A. Yes, I and Mr. Kinne saw Mr. Bassett; he selected the lavatories.

Q. You went with him? A. Yes, sir.

Q. Where did you go?

A. Around to 35th Street and 6th Avenue, to their show rooms.

Q. And after that you accepted the bid of Mr. Hirschfeld? A. Yes, sir.

Q. When he said he could not furnish them, what did you do? Did you see any officers of the Standard Sanitary Manufacturing Company after that? A. No. 3

Q. Did you make any effort to get those goods from them? A. No, sir.

Q. Whose goods did you get?

A. They recommended the Blairsville.

Q. Did you get them?

A. Yes, around the middle of August.

CROSS EXAMINATION BY MR. NOBLE:

Q. You were not doing this work under contract, but just day's work? A. Yes.

Q. You did not make any contract then with Mr. Hirschfeld, did you? A. Yes, sir; I bought the goods. 4

Q. You personally bought them? A. Yes, sir.

Q. Did you have any contract with the Westchester Lighting Company?

A. Yes, I bought several things together, besides that.

Q. I mean, you just went there and selected them?

A. Selected the goods and had a contract for other goods too.

Q. Were those other goods for the same job?

A. Yes, sir; but not from the Standard.

Q. What authority had you from the Westchester Lighting Company to make contracts for them?

A. I could do that; I was supplying the goods.

Q. You were doing day's work and supplying the goods?

A. Yes, sir.

Q. When Mr. Hirschfeld told you that you could not get the goods of the Standard Sanitary Manufacturing Company, you took the Blairsville goods; is that correct?

A. Yes, sir.

Q. And you never made any effort to get the Standard goods after that; is that correct? A. Yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Adjourned.

IN THE CIRCUIT COURT OF THE UNITED STATES 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

2

Post Office Building,

Chicago, Ill., December 13, 1910.

Pursuant to notice, the taking of evidence for the Petitioner was resumed in the Post Office Building, in Chicago, Ill., on the thirteenth day of December, 1910, at 2.45 o'clock P. M.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General, for the Petitioner. 3
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Defendants.

JOSEPH F. GROSSWILLER, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Grosswiller, what is your business?
A. I am in the wholesale plumbing supply business. 4
Q. You are a jobber of plumbing supplies? A. Yes, sir.
Q. What is the name of your firm?
A. The Joseph F. Grosswiller Supply Company.
Q. What is your position in that firm?
A. President and Treasurer.
Q. Where are you located? A. Toledo, Ohio.
Q. They are jobbers in sanitary enameled iron ware?
A. Yes, sir.

1 Q. Such as bathtubs, lavatories and sinks? A. Yes, sir.

Q. And other articles that go in that term? A. Yes, sir.

Q. You buy from the manufacturer and sell to the plumber? A. Yes, sir.

Q. Where are your customers located, generally speaking? A. Ohio, Michigan and Indiana.

Q. You ship from your store house? A. Yes, sir.

Q. Or your show rooms? A. Yes, sir.

Q. To these plumbers located in these various states? A. Yes, sir.

Q. Do you send orders to them from the manufacturers
2 direct?

A. Yes, sir; in some cases, where we do not have the goods in stock.

Q. Before June 1, 1910, with what manufacturers of sanitary enameled iron ware did you do business?

A. With the Cahill Iron Works, the L. Wolff Manufacturing Company, the Iron City Sanitary Manufacturing Company and the Standard Sanitary Manufacturing Company. I think that is all. The Cahill Iron Works are located at Chattanooga, Tennessee; the L. Wolff Manufacturing Company is located in Chicago; the Iron City Manu-
3 facturing Company is in Pittsburgh; the Standard Sanitary Manufacturing Company is in Pittsburgh, and I think that is all. We may buy some small orders from perhaps some of the other manufacturers.

Q. But these were your principal suppliers?

A. Yes, sir.

Q. At that time you were buying these goods on orders without contract? A. Yes, sir; in most all cases.

Q. On June 1, 1910, or about that time, did you receive a series of letters and contracts from a number of manufacturers engaged in the manufacture of sanitary enameled
4 iron ware? A. Yes, sir.

Q. I show you these letters and contracts and ask you if you received those about the time stated therein?

A. Yes, sir; we received all of those.

Mr. GROSVENOR: I offer those letters and contracts in evidence as "Petitioner's Exhibit No. 234."

Papers referred to were then marked and filed as "Petitioner's Exhibit No. 234."

Mr. GROSVENOR: This exhibit includes a letter with

a contract from each of the following companies, the contracts being generally in duplicate: The Humphryes Manufacturing Company of Mansfield, Ohio; the Barnes Manufacturing Company, Mansfield, Ohio; each of those are dated June 4; The National Sanitary Manufacturing Company of Salem, Ohio, dated June 6; the Union Sanitary Manufacturing Company of Noblesville, Indiana, dated May 31; the Standard Sanitary Manufacturing Company of Pittsburgh, dated June 4; the United States Sanitary Manufacturing Company, dated May 31; McVay & Walker, Braddock, Pennsylvania, dated June 4; The McCrum-Howell Company, Chicago, dated June 28; L. Wolff Manufacturing Company, Chicago, dated June 6; The Cahill Iron Works, Chattanooga, Tennessee, dated June 1; Kerner Manufacturing Company Zalienople, dated June 7; and similar contracts from the Day-Ward Company without any letter. Each letter from each of the above manufacturers contains this sentence: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware," and the contract attached to each letter is a Jobber's License Agreement similar to Petitioner's Exhibit No. 11.

Q. Did you sign one of these contracts? A. No, sir.

Q. Have you been able to get the goods of these manufacturers from whom you received contracts, which you did not sign, from those manufacturers? A. No, sir.

Q. You have handed me certain letters which I will offer in evidence as separate exhibits. Will you identify those as being letters received from and sent by you to the various manufacturers whose names appear on those letters?

A. Yes, sir; those were all received and sent by us.

Mr. GROSVENOR: I offer these as "Exhibits Nos. 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, and 255."

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 235, 236, 237, 238, 239,

240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254 and 255."

Mr. GROSVENOR: Petitioner's Exhibit No. 235 reads as follows:

"7/6/10.

"Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"Gentlemen:—

"Referring to the slop sink ordered on our order #20048 would say the catalogue figure should be 1350. Please make this change and ship the same as promptly as possible and oblige,

"JFG-RM Yours truly,"

Petitioner's Exhibit No. 236 reads as follows:

"Pittsburgh, U. S. A., July 11, 1910.

"Jos. F. Grosswiller Supply Co.
Toledo, Ohio.

"Gentlemen:—

"We are in receipt of your valued order #20048 specifying one 18x22" Plate Slop Sink less Faucets, for shipment to Kiel Bros. Plumbing & Heating Co. Wheeling, W. VA. We believe you are thoroughly familiar with the Resale arrangement which has become effective June 6th and it would be necessary for you to sign the Jobbers license agreement in order to secure Licensed Sanitary Enameled Ware. The fixtures as specified on your order is covered by the Resale arrangement and it would be necessary for us to invoice the same at the Resale prices after we have received your signed Jobbers License Agreement.

"Awaiting your advice in this connection, we are,

"Very truly yours,
"STANDARD SANITARY MFG. CO.
"H. J. C. Heckman,
Mgr. Quotation Department."

"HJCH

Petitioner's Exhibit No. 237 reads as follows: 1

"Pittsburgh, U. S. A., July 12, 1910.

"Jos. F. Grosswiller Supply Company,
Toledo, Ohio.

"Gentlemen:—

"We are in receipt of your favor of the 6th relative to slop sink specified on Order #20048, wherein you request us to ship same as promptly as possible.

"We regret to advise we cannot enter this order for shipment until we are in receipt of your signature with resale agreement. Upon receipt of same will give order further attention. 2

"Yours truly,

"STANDARD SANITARY MFG. CO.

"HAC. per H. A. Craig."

Petitioner's Exhibit No. 238 reads as follows:

"Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"Gentlemen:—

"Replying to your favor of the 11th would say under the circumstances it will be necessary to cancel our order #20048. 3

"Yours truly,

"JFG/RM
"Toledo, O."

Petitioner's Exhibit No. 239 reads as follows:

"8-18-10

"Cahill Iron Works,
Chattanooga, Tenn. 4

"Gentlemen:—

"Referring to our order #20557 for Fig. 142-1/2 lavatories would say we have an order for these for a customer of ours to be installed in a building where they are specified and no other lavatory will answer. We therefore request you to make immediate shipment as the delay will cause our cus-

1 tomer serious inconvenience and will cause his customer considerable damage.

"JFG/RM Yours truly,"

Petitioner's Exhibit No. 240 reads as follows:

"Chattanooga, Tenn., U. S. A.,
Aug. 20, 1910.

"Jos. F. Grosswiller Supply Co.,
Toledo, O.

"Gentlemen:—

2 "Your favor of the 18th is to hand. You must understand that we want all the business that we can get, but it is the same proposition you put up to us several weeks ago. We signed an agreement accepting a license to manufacture goods under this license arrangement. That arrangement says that we are not to sell jobbers unless they have signed a jobber's agreement. We have been told by some jobbers that there are some manufacturers who are not living up to this, but you know us well enough
3 to know that, if we agree to do a thing, we carry it out to the letter. We have written Mr. Wayman and asked him if we could not make exceptions to this rule. He replies to us positively that we are not allowed to break this agreement, that we are only allowed to sell jobbers who have signed the jobbers' agreement. We have been friends for a long time, and you have been good customers of ours, and it is a very disagreeable thing to do to have to decline your orders, but you can see our situation very plainly, and we trust that you will not blame us for
4 our action in this matter. We will be more than glad to fill your order, if you will put us in position to do so by returning to us the jobbers' agreement signed. Otherwise, we are not permitted to do so, by the terms of our license. Whatever opinion you may have of this license agreement, we look upon it as a very binding agreement, and we are not in position to violate same.

"Again hoping that you will not have any unkind

feelings towards us for the position we are compelled 1
to take, and with Mr. Caldwell's kindest regards to
Mr. Grosswiller, we beg to remain

"Yours truly,

"THE CAHILL IRON WORKS,

"FHC/W FHC."

Petitioner's Exhibit No. 241 reads as follows:

"8-22-10

"Cahill Iron Works,
Chattanooga, Tenn. 2

"Gentlemen:—

"We are in receipt of your favor of the 20th and notice with great interest the contents of same. We would say in reply, we are very much in need of the lavatories we ordered on our order #200557, as some of these lavatories are to go on a job the goods have been specified for and nothing else will answer.

"The reason given in your letter of the 20th for not shipping the goods, is not at all satisfactory to us and we must respectfully insist upon your making immediate shipment. If not, we are afraid we 3
will be put to considerable expense and our customer to great inconvenience and hope you will not compel us to be put to this loss.

"The statement that you make in your letter that you are told that some of the manufacturers are not living up to your so called contract, we think is correct as we are informed from very reliable parties that some of the largest manufacturers, who are members of the agreement, are shipping goods to jobbers, who have not signed the so called agreement. However that does not influence us to write a letter 4
of this kind. We need the goods and we sent you the order and if you do not want to ship them on open account, you can ship with B/L attached and we must again insist upon your making immediate shipment.

"With kindest regards to Mr. Caldwell, we remain,

"JFG/RM Yours truly,"

Petitioner's Exhibit No. 242 reads as follows:

"Chattanooga, Tenn., U. S. A.,
August 24, 1910.

"Mr. Jos. F. Grosswiller,
133 Michigan St.,
Toledo, Ohio.

"Dear Sir:—

"Your favor of the 22nd to hand.

"Our letter of the 20th explains our position fully. You were notified in as respectfully and considerate a manner as possible why we could not take your orders and you cannot blame us for declining the order. You took the order after being requested not to do so. There is no occasion for you to lose one cent as the plumber can send the order in direct and get it filled, or can order from some other jobbing who does handle licensed ware. We, of course, do not solicit the plumbing trade, but rather than see you inconvenienced we will make an exception and sell direct in this case.

"Before signing the "So called contract" (as you term it) we consulted the best legal talent we could find at home and in New York, and signed the same with their advice, and when we conclude to break any of the terms we expect to do so in the open and notify Wayman we have done so—give him our reasons and take the consequences—regardless of how other people keep their contracts.

"We do not see what we can add further except to repeat that you were notified and requested not to take orders for our goods, and you cannot blame us at all for the position we are compelled to take.

"At the same time we wrote you, we had to write two or three other parties the same kind of letter we did you, explaining why we could not fill orders, and the same mail that brings your letter, brings an answer from one of these parties that is written in a very different strain from yours. They seem to appreciate the fact that we are not trying to act arbitrary or unaccommodating—but that we are in a

position where we cannot honorably take any other course. 1

These are strangers we never saw, and we cannot understand why Mr. Grosswiller, knowing us as long as he does, cannot look at it the same way.

"Yours very truly,
"THE CAHILL IRON WORKS.
"Per F. H. Caldwell,
President."

"FHC/P

Petitioner's Exhibit No. 243 reads as follows:

"10-1-10 2

"Mr. F. H. Caldwell, Pres.,
Cahill Iron Works,
Chattanooga, Tenn.

"Dear Sir:—

"Some time ago we sent you an order for some lavatories and you very kindly turned down the order for the reason that we did not sign the contract that you sent us. One of our customers here in the city later sent you an order for a one piece sink and you very kindly wrote him that you do not sell to 3 the plumbing trade but would be very glad to furnish the same and charge through the National Supply Co. of your city.

"We understand, from good authority, that the National Supply Co. have not signed this contract, therefore would like to know why you are willing to sell goods to them and not to us. We hardly believe it is to your interest to discriminate in that way and are entitled to some explanation.

"We have always given you most of our business up until the time you consolidated and feel if any 4 preference should be shown to any of the jobbers, it should be shown to us. Will you kindly let us hear from you as to whether you will now fill orders for us or not, and if not, why you fill them for the National Supply Co. We certainly are entitled to treatment equally as good as they are.

"JFG/RM Yours truly,"

Petitioner's Exhibit No. 244 reads as follows:

"Chattanooga, Tenn., U. S. A.,
Oct. 3, 1910.

"Jos. F. Grosswiller Supply Co.,
Toledo, O.

"Gentlemen:—

"Your favor of the 1st addressed to our Mr. Caldwell has been referred to the writer for reply, as Mr. Caldwell is confined to his bed at this time.

"We again desire to assure you that we regret very much not being able to do business with you, but, as explained in former correspondence, it is impossible for us to do so unless you sign the License Agreement.

"We were authorized by the Licensor to sell licensed enameled ware to the concern you named, and we therefore referred the inquiry to which you refer to them, or rather, we gave the plumber their name, together with names of several other jobbers who buy licensed ware.

"We assure you that we should like very much to have your business again and we trust that you can see your way clear to sign License Agreement, copies of which you have.

"Yours truly,

"HWP/W THE CAHILL IRON WORKS."

Petitioner's Exhibit No. 245 reads as follows:

"10-12-10.

"Cahill Iron Works,
Chattanooga, Tenn.

"Gentlemen:—

"Referring to your letter of the 3rd replying to our letter of the 1st would say that the reply you gave us is not very satisfactory and we would like to know why the Licensor would permit you or any other member of the agreement, to sell to anyone

who has not signed the agreement and not to another. 1

"If there is any way that you can put us on the same footing that the other party is on, we would be very glad to be put there, as we are anxious to give you business and in fact we are very much inconvenienced by not being able to give you our business. We lost an order yesterday for 6-18 x 30 fig. F-220, from one of our best customers and have lost quite a number of other orders which we have recorded here.

"Now we certainly can see no reason why we cannot receive the same treatment from you that you give anyone else that is in the same condition that we are and think you are discriminating more by doing what you have done. 2

"We would like very much to hear from you, which we trust will be with a favorable reply.

"JFG/RM Yours truly,"

Petitioner's Exhibit No. 246 reads as follows:

"11-21-10 3

"Cahill Iron Works,
Chattanooga, Tenn.

"Gentlemen:—

"Replying to your favor of the 19th ask you to please include hangers with the Plate F-262.

"We are also in need of 6-F-206 20 x 30 as described in your catalog. Can you ship these on our account? It is necessary for us to have them and we hope you can see your way clear to accept our order and make immediate shipment. 4

"Also hope Mr. Caldwell has recovered from his accident and is now entirely well.

"JFG/RM Yours truly,"

Petitioner's Exhibit No. 247 reads as follows:

"Chattanooga, Tenn., U. S. A.,
Nov. 23, 1910.

"Jos. F. Grosswiller Supply Co.,
Toledo, Ohio.

"Gentlemen:—

"We are in receipt of your favor of the 21st, requesting us to ship plate F-262 drain board with hanger, and we will be governed accordingly. Shipment will be made within the course of the next two or three days.

"In regard to 6 plate F-206 sinks, would state that you, of course, understand our position in the matter, and we would request that you write the Licensor.

"Thanking you for the inquiry, we are

"Yours truly,
"THE CAHILL IRON WORKS,
"HWP-C By H. W. Powel."

Petitioner's Exhibit No. 248 reads as follows:

"11-25-10

"Mr. E. L. Wayman,
Pittsburg, Pa.

"Dear Sir:—

"We had an architect specify 6-Plate F-208 Cahill sinks in a six flat building which was awarded to one of our customers a few days ago.

"Our customer placed the order with us and we wrote to the Cahill Iron Works asking what they would do in regard to the matter and they referred us to you.

"We are compelled to furnish these goods to our customer and as he purchased all of his goods, from us, he of course looks to us to deliver the same to him.

"We therefore write asking you to inform us to whom we will send the order.

"The writer understands the National Supply Co.

of this city are getting goods from all of the Licensed manufacturers and Mr. Collins positively declares upon his word of honor that he has not signed the contract of the Licensors. Under the circumstances we feel we are entitled to the same treatment and hope we will receive it. Awaiting your early reply which we trust will be favorable, we remain, "JFG/RM Yours truly," 1

Petitioner's Exhibit No. 249 reads as follows:

"Nov. 28th, 1910.

"Jos. F. Grosswiller Supply Co., 2
Toledo, Ohio.

"Gentlemen:—

"Replying to your letter of the 25th with reference to your requirements for Cahill goods. About all I can suggest to you is that you buy these goods through some Licensed Jobber.

"Yours very truly,

"E. L. Wayman."

Petitioner's Exhibit No. 250 reads as follows: 3

"Toledo, Ohio, 12/6/10

Your Order A-553-4 Sold to J. F. Grosswiller Sup. Co.,
Our Register K-7187 City.

6-20 x 30" Fig. F-220 Sinks W/ 2 cocks, regular	21.00	39%	126.00	76.86
6-20 x 24" Fig. F-262 W. E. Drain Boards	6.00	48%	36.00	18.72
6-20 x 30" Fig. F-208 Chat. Sinks drilled 2 cocks	36.00	35%	276.00	179.40
				274.98
Less a/c 6 pr. - painted legs	3.00	29½%	18.00	12.69
				262.29

4

1	6-Rubber Mats	1.75	35%	10.50	6.83
	6-Crates	.45			2.70
	3-Crates	.26			.78
	6-Crates	1.25			7.50
					280.10
	Less freight allowance on 3040# 57½ cwt.				17.48
					262.62

"Shipped Direct 11/28/10"

2 Petitioner's Exhibit No. 251 reads as follows:

"10-11-10

"L. Wolff Mfg. Co.,
Chicago, Ill.

"Gentlemen:—

"Kindly quote us by return mail on the following list of fixtures.

1-H-4901/120 gallon ex. hvy. galv. boiler with steam coil.

1-H-4900, 52 gallon galv. mixing chamber.

3 2-H-4582, 2 double sections, 25 ft. each supplied with 15 spouts to each single section. Total 60 spouts. Fitted complete as desc. with soap dishes, white enam. inside, painted outside.

8-H-7737 Automatic syphon jet pressure tank closets.

2-Urinal stalls of hammered glass. Back & sides ¾" thick. Base 1" thick. Washdown pipe polished brass. Loose key stop 4 ft. long, 4 ft. high. White enam. C. I. gutter, arranged for ventilation.

2-9 x 9 H-2118 C. I. painted floor drains.

6-H-6943 drinking fountains with non Syphon C. I. drinking fountain trap, 2" outlet.

4 "EA/RM Yours truly,"

Petitioner's Exhibit No. 252 reads as follows:

"Chicago, Ill., Oct. 13-1910.

"J. F. Grosswiller Supply Co.
Toledo, O.

"Dear Sirs:—

"We have your favor of the 11th. enclosing list

of goods on which you ask us to make you prices. 1

"This is putting the writer in rather an awkward position as he does not like to refuse any request of this kind coming from your company, but he feels under existing conditions, that we will not be able to quote you prices on enameled goods, until after you have signed the contract.

"Regretting that conditions are such that we cannot comply with your request, we remain,

"Yours truly,

"L. WOLFF MFG. COMPANY

"W. Utting." 2

Petitioner's Exhibit No. 253 reads as follows:

"10-15-10

"L. Wolff Mfg. Co.,
Chicago, Ill.

"Gentlemen:—

"Replying to your letter of the 13th would say if you do not wish to give us our cost price on material in our letter of the 11th, kindly give us our selling price to the plumber, so we can quote the different plumbers, as we expect to have all matters arranged in regard to the contract proposition, when the writer goes to Chicago. 3

"We worked very hard to have these goods specified and it was through our influence that the architect specified them and we feel we should have at least the information in regard to the prices to the trade, therefore ask you to be kind enough and send us the same by return mail, without fail and greatly oblige,

"JFG/RM Yours truly," 4

Petitioner's Exhibit No. 254 reads as follows:

"Chicago, Ill., Oct-19-1910.

"J. F. Grosswiller, Supply Co.,
Toledo, O.

"Dear Sirs:—

"We have your favor of the 15th. also your telegram of the 18th. and we regret very much indeed

1 that we are not in a position to change what we state in our letter of the 13th.

"The goods called for are specified from our catalogue, and the architect evidently desires that our goods be installed.

"We regret that we cannot comply with your request and make you the prices you desire.

"Yours truly,

"L. WOLFF MFG. COMPANY

"W. Utting."

2 Petitioner's Exhibit No. 255 reads as follows:

"10-20-10

"L. Wolff Mfg. Co.,
Chicago, Ill.

"Gentlemen:—

"Replying to your letter of the 19th wish to say for your information that if it had not been for the writer, your goods would never have been specified for the job that we sent you the specifications for that you refuse to quote us on. We were the cause
3 of this and no one else and certainly do not at all feel we are being treated fair by being turned down by your not sending us a copy of the prices at least, that you quote to the plumbers. We certainly feel you ought to at least give us that consideration, as you are willing to quote any plumber that is in the market for goods and if we had the plumbers prices in hand, we could quote some of our customers who have been waiting all this time, for prices.

"It was through our influence that Mr. Augur was invited to come here and interview the architects and
4 that these goods were specified, so do not give the credit to any one else but ourselves for causing these specifications to be made up.

"While you may greatly regret not being able to comply with our request, at the same time we consider it anything but right to turn down this proposition as it means the loss of some business to us and money as well.

JFG/RM Yours truly,"

BY MR. GROSVENOR: 1

Q. Petitioner's Exhibit No. 236 is dated July 11, 1910, and is from the Standard Sanitary Manufacturing Company. It acknowledges an order from you and says: "We believe you are thoroughly familiar with the Resale arrangement that has become effective June 6th, and it would be necessary for you to sign the Jobbers License Agreement in order to secure licensed sanitary enameled ware." Petitioner's Exhibit No. 237 says: "We regret to advise we cannot enter this order for shipment until we are in receipt of your signature with Resale Agreement. Upon receipt of same will give order further attention." You did not sign 2 that agreement, did you? A. No, sir.

Q. Were you able to get those goods?

A. No, sir. I think you will find a letter there from the Standard Company cancelling that order.

Q. On your request, when you refused to sign the contract? A. Yes, sir.

Q. Petitioner's Exhibit No. 239 is an order to the Cahill Iron Works for lavatories; in that order you say: "We therefore you request you to make immediate shipment as the delay will cause our customer serious inconvenience and will cause his customer considerable damage." The 3 reply of the Cahill Iron Works, dated August 20, 1910, says: "Your favor of the 18th is to hand. You must understand that we want all the business we can get, but it is the same proposition you put up to us several weeks ago. We signed an agreement accepting a license to manufacture goods under this license arrangement. That agreement says that we are not to sell jobbers unless they have signed a jobber's agreement. We have been told by some jobbers that there are some manufacturers who are not living up to this but you know us well enough to know that, if we agree to do a thing, we carry it out to the letter. We have 4 written Mr. Wayman and asked him if we could not make exceptions to this rule. He replies to us positively that we are not allowed to break this agreement, that we are only allowed to sell jobbers who have signed the jobbers' agreement. We have been friends for a long time, and you have been good customers of ours, and it is a very disagreeable thing to do to have to decline your orders, but you can see our situation very plainly, and we trust that you will not

1 blame us for our action in this matter. We will be more than glad to fill your order, if you will put us in position to do so by returning to us the jobber's agreement signed. Otherwise, we are not permitted to do so, by the terms of our license. Whatever opinion you may have of this license agreement, we look upon it as a very binding agreement, and we are not in position to violate same." Exhibit No. 241 is your reply to this last letter, in which you state, "The reason given in your letter of the 20th for not shipping the goods, is not at all satisfactory to us and we must respectfully insist upon your making immediate ship-
2 ment. If not, we are afraid we will be put to considerable expense and our customer to great inconvenience and hope you will not compel us to be put to this loss." The letter of August 24, being Exhibit No. 242, from the Cahill Iron Works, acknowledges receipt of your letter and says: "At the same time we wrote you we had to write to two or three other parties the same kind of letter we did you, explaining why we could not fill orders, and the same mail that brings your letter, brings an answer from one of these parties that is written in a very different strain from yours. They seem to appreciate the fact that we are not trying to act
3 arbitrary or unaccommodating—but that we are in a position where we cannot honorably take any other course." Were you able to get those goods to which this correspondent refers?

A. Yes, sir; I had to buy them through a jobber.

Q. A jobber located where? A. Toledo.

Q. Your business is that of a jobber, isn't it?

A. Yes, sir.

Q. And you bought from one of your competitors?

A. Yes, sir; the National Supply Company.

Q. Petitioner's Exhibit No. 247 suggests that you write
4 to the Licensor; did you do so? A. Yes, sir.

Q. Who is the Licensor? A. I wrote to Mr. Wayman.

Q. Exhibit No. 248 is your letter to him and Exhibit No. 249 is his reply, dated November 28th, 1910, and saying "Replying to your letter of the 25th with reference to your requirements for Cahill goods. About all I can suggest to you is that you buy these goods through some licensed jobber." Were these goods such goods as you could have obtained from the Kohler people or the Iron City?

A. No, sir. 1

Q. Are they goods of a character which they do not manufacture? A. They do not manufacture them.

Q. Petitioner's Exhibit No. 250 is a bill for the goods which you bought from the National Supply Company, is it not? A. Yes, sir.

Q. And those are the goods which you ordered from the Cahill Iron Works? A. Yes, sir.

Q. How many years have you been doing business with the Cahill Iron Works?

A. I don't know how long he has been in business, but ever since he has been in the business. 2

Q. How long have you been in business?

A. Eleven years.

Q. And you have been doing business with them ever since you have been in business?

A. Ever since they have been in business. I think I did business with them when I was with the Toledo Supply Company.

Q. At what price did you buy from the National Supply Company?

A. The price which they charged was the same price that we get from our customers. 3

Q. Then you made nothing on the transaction? A. No.

Q. Exhibit No. 251 is a letter to the L. Wolff Company and is an order for—

A. It is not an order but an inquiry.

Q. Which of those goods are sanitary enameled iron ware? A. The third and fourth items.

Q. Exhibits No. 255 is the reply of the L. Wolff Company to the inquiry, is it not? A. Yes, sir.

Q. That reads, "We have your favor of the 11th. enclosing list of goods on which you ask us to make you prices. 4

This is putting the writer in rather an awkward position as he does not like to refuse any request of this kind coming from your company, but he feels under existing conditions, that we will not be able to quote you prices on enameled goods, until after you have signed the contract.

Regretting that conditions are such that we cannot comply with your request, we remain,"; now in that first order

1 you were inquiring as a jobber in order to buy at jobbers' prices, is that right? A. Yes, sir.

Q. After receiving that letter, did you direct this letter to the L. Wolff Company (indicating)? A. Yes, sir.

Q. It is known as Exhibit No. 253, and is dated October 15, and reads: "Replying to your letter of the 13th would say if you do not wish to give us our cost price on material in our letter of the 11th, kindly give us our selling price to the plumber, so we can quote the different plumbers, as we expect to have all matters arranged in regard to the contract proposition, when the writer goes to Chicago.

2 We worked very hard to have these goods specified and it was through our influence that the architect specified them and we feel we should have at least the information in regard to the prices to the trade, therefore ask you to be kind enough and send us the same by return mail, without fail and greatly oblige," then, is Exhibit No. 254 the letter which you received in reply to this letter? A. Yes, sir.

Q. And that letter reads: "We have your favor of the 15th, also your telegram of the 18th, and we regret very much indeed that we are not in a position to change what we state in our letter of the 13th.

3 The goods called for are specified from our catalogue, and the architect evidently desires that our goods be installed.

We regret that we cannot comply with your request and make you the prices you desire." Were you able to get those goods?

A. No, sir; I did not make any quotation on those goods because I had no prices.

Q. You could not get the goods at plumbers' prices?

A. No, sir; they would not quote me any price at all, so they state in that letter.

4 Mr. GROSVENOR: That is all.

CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Grosswiller, in respect to these goods which you wrote about to the L. Wolff Company, and in respect to which Mr. Grosvenor has just been inquiring, did you get other goods to fill that order or have the specifications changed?

A. I did not have the order, and neither did we figure

on the material, because we could not get prices for that make of goods. 1

Q. In other words, you did not have the order for the goods? A. No, sir; but I will explain that to you—

Mr. NOBLE: Just answer the question.

The WITNESS: I thought I could make it plainer.

Mr. NOBLE: Then you may explain.

A. (Continuing): Mr. H. W. Wachter, of Toledo, is one of our prominent architects and he is a very good friend of mine, or our house, and it was through our influence that Wolff Company's goods were specified in this contract; feeling that we could get prices on those goods, we worked with the architect to have them specified, but after the specifications came out and they asked us for prices, we were unable to quote them for the reason that the L. Wolff Company refused to make any prices. 2

Q. What was the date of the inquiry which you made?

A. I cannot tell from memory; the correspondence there will show that.

Q. The inquiry was first made on the eleventh day of October, then, if I understand you? A. Yes, sir.

Q. You testified in reply to Mr. Grosvenor's question that on June 6th you received a letter from the L. Wolff Company containing copies in duplicate of the Jobber's License Contract, and a letter containing a sentence which Mr. Grosvenor read to you and which was in effect that they could not sell you licensed sanitary enameled iron ware except if you signed a Jobber's License Agreement; is that right? A. Yes, sir. 3

Q. Then, you knew on June 6th that the L. Wolff Company had signed a contract which prevented them from selling to you licensed sanitary enameled iron ware except on those terms? 4

A. I had no means of knowing that they had signed that contract.

Q. They wrote you that, did they not?

A. I suppose they did say something about it.

Q. Didn't Mr. Grosvenor read a letter here saying that they had signed a contract?

A. I gave him the paper, and I do not recall.

Q. Don't you know that the L. Wolff Company wrote

1 you that they could not sell you unless you signed a Jobber's License Contract with them?

A. Yes, sir; I believe they did.

Q. You knew that in October, too?

A. Yes, sir; but I received a letter from the Cahill Iron Works in the meantime, saying that some of the manufacturers were not living up to that agreement and so I took a chance in working on that order.

Q. You took a chance in working on that order before you inquired from the L. Wolff Company? A. Yes, sir.

Q. You could buy those goods from other jobbers, could
2 you not?

A. If I wanted to without making anything on the transaction.

Q. And that was true of the other licensed manufacturers goods, wasn't it? A. Yes, sir.

Q. So if they were specified, you could buy the goods of these manufacturers?

A. Without making profit, which I could not keep up, because I could not do that and pay my rent and buy goods and everything else.

Q. You could have bought them, though?

3 A. I did not try to buy those particular goods.

Q. But other goods you did try to buy and did buy?

A. Yes, sir.

Q. Did you write those letters to Mr. Wolff at the suggestion of anybody? A. No, sir.

Q. Did you write any of these letters of inquiry at the suggestion of anyone? A. No, sir.

Q. The Cahill goods which you refer to in Exhibit No. 248. did you buy those goods from anyone else?

A. I ordered some of them through the Cahill Iron Works and they requested that I have them come through
4 a jobber so that I got them through the National Supply Company of our City.

Q. You got them from the National Supply Company?

A. Yes, sir.

Q. You got those goods then, in the manner which you have just described? A. Yes, sir; without any profit.

Q. But you got those goods in the manner you have described? A. Yes, sir.

Q. Is the same true as to the Cahill lavatories, referred to in Exhibit No. 239, which you ordered?

A. Yes, sir; they are included in that bill. 1

Q. For how many years have you been doing business with the Iron City Manufacturing Company?

A. Why, I think six or seven years.

Q. A large portion of your business was done with them, was it not? A. No, sir.

Q. How much business have you done with Kohler & Son? A. I have never done any business with them.

Q. Your business has been chiefly with the Iron City and the other people named?

A. The largest with the L. Wolff Company and then the Iron City and then the Cahill Iron Works. 2

Q. You still do business with the Iron City Company?

A. Yes, sir.

Q. Who else do you do business with now?

A. The Blairsville Enameled-Iron Company.

Q. That is who else you do business with other than the Iron City Company? A. The Blairsville people.

Q. Do you do business with Louis Lipp? A. No, sir.

Q. Or the Clymer Manufacturing Company?

A. No, sir.

Q. Now, you said in reply to one of Mr. Grosvenor's questions that you obtained goods on orders previous to 3
June 1st, with some of the Companies without contracts?

A. No, with contracts.

Q. Without contracts, I understood you to say?

A. With contracts before June 1st; in other words, we had contracts with some of the enameled ware manufacturers before the licensing agreement came out; that is what I intended to convey in my answer.

Q. Did you obtain goods from companies by simply sending in orders also?

The WITNESS: Sir? 4

Mr. NOBLE: I asked you whether you obtained goods from other companies upon simply sending in orders also, that is, before June 1st?

A. I don't think we had orders in with anyone except the Wheeling Enameled-Iron Company.

Q. I don't think you understood me. Previous to June 1st, and for a long time back, did you from time to time

1 order goods from different manufacturers for specific orders? A. Oh; yes, sir.

Q. And with some of them you had standing contracts as to yearly business?

A. No, sir; I think we have a contract with the Wheeling Enameled-Iron Company for a certain number of tubs, a certain amount of tubs.

Q. Per year? A. Until the order was filled.

Q. You made a contract for a certain amount of goods?

A. Yes, sir; to be taken as wanted.

Q. And did you have similar contracts with the other
2 companies?

A. We had, but I don't think we had at that time with the exception of this one.

Q. What is the general business of the Grosswiller Supply Company?

A. Wholesaler of plumbing and steam fitting supplies.

Q. Your business in sanitary enameled iron ware simply forms a part of your entire business?

A. Yes, sir; it is only a part of our business.

Q. What percentage would you say the sanitary enameled iron ware part of it constituted?

3 A. About twenty-five per cent.

Q. And the rest of your business is devoted to other plumbing supplies? A. Yes, sir; and steam goods.

Q. Steam goods? A. Yes, sir.

Q. The Iron City Company is one of the large manufacturers of sanitary enameled iron ware, is it not?

A. I think so.

Q. And what is the reputation in the trade as to size of the Kohler Company?

A. I don't think I am prepared to answer that.

4 RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Do you know Mr. E. L. Wayman? A. Yes, sir.

Q. Did you ever have any conferences with him or talks with him respecting the joining or signing of this Jobber's License Agreement? A. Yes, sir.

Q. On what occasion?

A. I called on Mr. Wayman about six or seven weeks ago, I think, in his office at Pittsburgh, to find out if it was possible for us to get enameled ware from the licensed

manufacturers under these conditions and I understood the National Supply Company were— 1

Mr. NOBLE: I object to this unless we have the actual conversation.

Mr. GROSVENOR: Tell what you said to him as far as you can.

The WITNESS: My object in making the trip to Pittsburgh—

Mr. NOBLE: I object to the object of the trip.

Mr. GROSVENOR: State what was said?

The WITNESS: Well, I went to Pittsburgh and called on Mr. Wayman and asked him if he could put us in a position to purchase sanitary enameled iron ware on the same basis as some of our competitors. Mr. Collins of the National Supply Company— 2

Mr. NOBLE: I object to that.

BY Mr. GROSVENOR:

Q. Had you said anything about the National Supply Company? A. I am coming to that now, yes.

Q. What did you say?

A. I told Mr. Wayman I understood from Mr. Collins that the National Supply Company were able to get goods from some of the licensed manufacturers and he claimed positively that the National Supply Company did not sign the contract. I said I wanted to get goods on the same basis. 3

Q. What did he say?

A. He said if I wanted to find out anything about the National Supply Company I should call on Mr. Collins and ask him.

Q. Did he say anything about the contract?

A. He said if I would sign a contract he would give me a letter permitting me to buy goods from manufacturers who were not licensed manufacturers. 4

Q. Was anybody present at that time?

A. I think not, only Mr. Wayman and myself.

Q. Do you know Mr. Ahrens? A. Yes, sir.

Q. Have you had any conversation with him about signing and license agreement? A. No, sir.

1 Q. Or with Mr. Torrance? A. No, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

OSCAR A. KROOS, a witness heretofore produced and sworn, re-called by the Petitioner for continuation of direct examination, testified as follows:

DIRECT EXAMINATION BY Mr. GROSVENOR (continued):

2 Q. Mr. Kroos, you have already been sworn?

A. Yes, sir.

Q. You are Secretary of the J. M. Kohler Sons Company? A. Yes, sir.

Q. At the request of counsel for the Government, have you prepared certain tabulations or calculations showing the net cost to jobbers of various Kohler articles as calculated by the re-sale plan, that is according to the price list known as Petitioner's Exhibit No. 41, and calculated according to the Kohler system, and prices in force and effect June 6th, the two calculations being placed in com-
3 parison with each other in your tabulation?

A. There is one item in there that does not show the the net cost to the jobber, but the price we would have obtained from the jobber under the re-sale plan.

Q. But you have prepared these tabulations along the lines suggested? A. Yes, sir.

Q. Now, I show you a sheet labelled "Five Year Guaranteed Baths, Five Foot Size on Base, Kohler's 'Szarina' Plate A-14 Standard's 'Albion' Plate P-205." Kohler's "Czarina" is the name for the five foot tub in respect to which the calculations are made on this sheet? A. Yes, sir.

4 Q. The Standard's "Albion" is the competing tub of that Company? A. Yes, sir.

Q. That is the tub with which the "Czarina" competes?

A. Yes, sir.

Q. The first column which reads "Jobber's Cost. Resale Plan Schedule 1 Page 32.", by "Jobber's Cost", you mean there the cost of the jobber in buying from the manufacturer according to the system then described in this sheet?

A. Yes, sir.

Q. By "Resale Plan", which is according to Exhibit No. 41, you mean this price list (indicating)? A. Yes, sir. 1

Q. In Schedule 1 means the tub is taken from the Schedule 1 which is taken in that price list? A. Yes, sir.

Q. "Page 32" means page 32 of Schedule 1 stated in that price list? A. Yes, sir.

Q. Then on the third horizontal line it reads, "General Zone Pittsburgh"; then "Zone 1, Buffalo"; "Zone 2, New Orleans" and so on down to Zone 11 which is "Phœnix"?

A. Yes, sir.

Q. In making these tabulations on this sheet have you used this price list which is Exhibit No. 41? A. Yes, sir. 2

Q. And the several zones there referred to as the general zones are the zones described in this price list?

A. Yes, sir.

Q. And the names of the cities which you have inserted are typical jobbing points in the zones under which they are placed? A. Yes, sir.

Q. And those points are given in this price list?

A. Yes, sir.

Q. Now, returning to the first perpendicular column, the first line of which reads as I have stated, the next line states "Resale List", opposite that, under the head "General Zone Pittsburgh", is stated $83.75; now that is the list price stated in this Wayman price list, which is Petitioner's Exhibit No. 41, at page 32 of Schedule 1 for the five foot guaranteed tubs; is that right? A. Yes, sir. 3

Q. On that page of that price list at the top of the page are given the names of several tubs, that is the "Rico of the Day-Ward Company; the "Mozello" of the Iron City; the "Czarina" of the Kohler Company and the "Albion" of the Standard, the "Colona" of the United States and the "Neptuna" of the Wolff Company? A. Yes, sir.

Q. The next line states, "Resale Carload Discount"; by that you mean the resale carload discount as stated on this same page? A. Yes, sir. 4

Q. The next column under the General Zone says "45%"; what do you mean by that?

A. That is the carload discount.

Q. For the General Zone?

A. For the General Zone; yes, sir.

Q. As given by this price list?

1 A. As given in that resale price list.

Q. And under the tabulation on that page? A. Yes, sir.

Q. This page gives the discount for the several zones? A. Yes, sir.

Q. Now, the next figure is $37.69; how did you get that? A. That is the discount applied to the list.

Q. You multiply $83.75 by 45 per cent. and that gives you $37.69? A. Yes, sir.

Q. Under that is given $46.06; is that obtained by subtracting from $83.75 the figure $37.69? A. Yes, sir.

Q. And that gives you $46.06, which is the price to the
2 jobber omitting the discount which we will consider hereafter? A. Yes, sir.

Q. In the next line is stated "7½% Jobber's Discount on Invoice"; where do you get that?

A. From the Jobber's License Agreement, Article 1.

Q. I show you what is a license agreement, marked Petitioner's Exhibit No. 11, and ask you if that 7½% discount is taken from what is stated on the first page there "Schedule No. 1, Five Year Guarantee"? A. Yes, sir.

Q. Now you get the $3.45? A. Yes, sir.

Q. And you subtract that from $46.06, and that gives
3 you $42.61? A. Yes, sir.

Q. That is the price to the jobber after being allowed this regular discount of 7½ per cent.? A. Yes, sir.

Q. The next line gives the item "Crating" at sixty cents? A. Yes, sir.

Q. Where do you get that?

A. From the resale price book.

Q. Where do you get that provision in the resale price book, which is Petitioner's Exhibit No. 41?

A. On page 18, boxing, crating and miscellaneous net charges; "Crating baths, domestic shipment, 60 cents each".

4 Q. Then, adding that 60 cents you then have $43.21 in the next line; then the next line says "Freight Allowance—575 lbs", and opposite that in the second perpendicular column is 24 cents, and then $1.38; state where you get those figures, please?

A. The rate there is 25 cents per hundred weight from Sheboygan to Pittsburgh on bathtubs on carload lots.

Q. And the weight is 575 pounds? A. Yes, sir.

Mr. NOBLE: You said from Sheboygan to Pittsburgh? 1

The WITNESS: Yes, sir.

BY Mr. GROSVENOR:

Q. Why do you make the freight allowance; where is that found?

A. The resale price book specifies that the prices in the books are f. o. b. cars factory, with all freight allowances.

Q. I direct your attention to Paragraph 2 of the Petitioner's Exhibit No. 11; read that, will you, please?

A. (Reading): "Goods will be sold f. o. b. purchaser to the cars where the factory is located, at the prices given in the resale sheet for the various zones, subject to the discounts and rebates, with full freight allowed on shipment of 200 pounds and over, subject to the freight tariff regulations herein provided for." 2

Mr. NOBLE: What paragraph is that?

Mr. GROSVENOR: Paragraph 2 of the Jobber's License Agreement.

Q. That regulation is also stated in Petitioner's Exhibit No. 41, where? A. On page 2 of the General Conditions. 3

Q. Will you read that?

A. (Reading): "Goods will be sold to the purchaser f. o. b. cars where the factory is located at the prices given in the Resale Agreement for the various zones, with full freight allowed on shipments of 200 pounds and over, subject to the freight tariff regulations herein provided for."

Q. And on page 4 it is also given, is it not? A. Yes, sir.

Q. Now, you say, the freight from Sheboygan to Pittsburgh per hundred pounds is 24 cents? A. Yes, sir.

Q. You calculate the weight at 575 pounds—

A. (Interrupting): Yes.

Q. (Continuing): And the freight from that weight and you get 1.38? A. Yes, sir. 4

Q. That is the allowance under the contract to the jobbers? A. Yes, sir.

Q. Then you subtract that from the figure above and you get the net cost to the jobbers so far of $41.83?

A. Yes, sir.

Q. In the next line of the first perpendicular column

1 the words "Rebates, 5% for Confining Purchases"; where do you get that?

A. From the Jobber's License Agreement, Article 7.

Q. Read that, please?

A. (Reading): "If all the conditions of this Agreement have been complied with and you have confined your purchases to the licensed manufacturers, we will pay you rebates on such purchases as you have made from us as follows: Schedule No. 1, five year guaranteed baths, foot pool, Sitz and Childs and receptors, 5 per cent."

Q. Then you multiply $41.83 by 5 per cent. and you get
2 $2.09? A. Yes, sir.

Q. And you subtract that from $41.83 and get $39.74?

A. Yes, sir.

Q. That is the cost so far? A. Yes, sir.

Q. In the next line are the words "5% for Tonnage. Based on Purchases of $30,000." Where do you get that?

A. From Article 8 of the License Agreement.

Q. That reads how?

A. (Reading): "If your purchases, of material less returned goods covered by the various schedules of the following manufacturers licensed under the patent enumerated
3 hereinbefore"—then follows an enumeration of the 16 licensed manufacturers—"have aggregated sums as follows, and if all the conditions of this Agreement have been complied with, the Company will pay the purchaser rebates on such purchases as they have made from the Company during the period ending December 31, 1910, as follows: $10,000, 2½ per cent.; $15,000, 3 per cent.; $20,000, 3½ per cent.; $25,000, 5 per cent.; $30,000, 5 per cent."

Q. You have then estimated the purchases to be $30,000?

A. Yes, sir.

Q. And multiplying that you get $1.99, which you sub-
4 tract from $39.74 and you get $37.75, which is the net cost to the jobber; is that right?

A. That is, it is the net price which we obtain from the jobber under the resale plan.

Q. That is what you would receive from the jobber according to the resale price? A. Yes, sir.

Q. So that in calculating the actual cost to the jobber, he has to pay the carload weight from Sheboygan to Pittsburgh?

A. Yes, sir; freight would have to be added to that net

amount shown on the sheet there in order to arrive at the jobber's cost, for the reason that we have already allowed it in the calculation there. 1

Q. The calculation which we have thus far made has been according to the resale price list?

A. Yes, sir; as we interpret it.

Q. Now, I direct your attention to the rest of this first perpendicular column which begins, "Kohler's Price June 6th, 1910"; by that you mean the price that you were obtaining in your sale?

A. It was the general price which we were obtaining at that time. 2

Q. The first item is "List"; then in the second column it says $58.50; that is the price at which the "Czarina" tub was listed? A. Yes, sir.

Q. Then the "Jobber's Carload Discount on Invoice—20-10-5 & 5"?

A. Those were the discounts we allowed the jobbers on that particular tub.

Q. That amounted to $20.49, is that right? A. Yes, sir.

Q. Subtracting that from $58.50 you get $38.01?

A. Yes, sir.

Q. Did you charge for crating? A. Yes, sir. 3

Q. That is itemized at 50 cents? A. Yes, sir.

Q. Adding that to $38.01 you get $38.51; then you made an allowance for freight, which you calculate at 575 freight allowance, 24 cents a pound, $1.38; subtracting that $1.38 leaves "Net Cost to the Jobber" $37.13; by that "Net cost to the jobber" you mean what you receive?

A. The net price we received from the jobber at that time.

Q. The next line is "Jobber's Net Cost. Resale Plan" and "$37.75" and "Kohler's Net Price to Jobber" at "37.13"? A. Yes, sir. 4

Q. Are those your calculations? A. Yes, sir.

Q. Now, you have made up the calculations on this sheet? A. Yes, sir.

Q. You have given these 37 sheets containing calculations in the manner which I have indicated for each of the 11 zones? A. Yes, sir.

Q. Did you make up all the calculations?

A. Well, I made up the majority of them, but I had some clerical help in connection with them.

Q. Those you did not calculate, did you check them up?

A. Yes, sir; I checked up all of those I did not calculate.

Q. So you have been over all of these figures?

A. Yes, sir.

Q. Now, we have been over the calculations for the General Zone, Pittsburgh; there are 11 other perpendicular columns, one for each of the 11 zones, and in the same way you have calculated for each of those zones the cost to the jobber according to the resale and the cost to the jobber according to the prices before the resale plan went into effect, is that right? A. Yes, sir.

Q. And stating at the bottom of the page the net increase in cost to the jobber and the per cent. of increased cost? A. Yes, sir; which we would have obtained.

Q. If you had entered into the licensing arrangement and adopted the resale prices? A. Yes, sir.

Q. The first sheet, No. 1, is for the five year guaranteed bath, 5 foot size on base, which we have been over and that shows the amount of increase for that five year guaranteed bath to be as follows: General Zone, 1.7—

Mr. NOBLE: You are using the word "cost". The witness says that is the price they would have obtained?

BY Mr. GROSVENOR:

Q. Is that right?

A. Yes, sir; the price we would have obtained under the resale plan.

Q. Then, this per cent. is the per cent. of the increased price?

A. That per cent. is the increase which we would have obtained on those various articles in the various zones in the jobbing trade if we had gone into this licensing arrangement and sold our product under the licensing agreement in effect at the time it was put into effect.

Mr. NOBLE: In other words, it does not represent anything about the price which the jobber has to pay but the percentage according to your understanding of the resale plan which you would have obtained if you had taken the license and sold the goods at those prices?

The WITNESS: Yes, sir.

Q. That is, if you had sold your goods according to the prices established by Exhibit No. 41 on many of the sheets of which articles manufactured by you are stated, you would have obtained these increased per cents? 1

A. Yes, sir.

Mr. GROSVENOR: This sheet for the five year guaranteed five foot bath show the following percentages in the various zones: General Zone, 1.7; Zone #1, 1.6; Zone #2, 9.2; Zone #3, 5.5; Zone #4, 8.3; Zone #5, 10.5; Zone #6, 8.8; Zone #7, 9.5; Zone #8, 9.2; Zone #9, 8.8; Zone #10, 6.9; Zone #11, 8.2. 2

Q. Now, the second sheet, page 2, if for a "5 Year Guaranteed Bath 5 Ft. Size Kohler's 'Carlton' Plate A-38 Standard's 'Luxuria' Plate P-186"; the first column reading "Jobber's Cost. Resale Plan Schedule 1. Page 17". I now direct your attention to page 17 in Schedule No. 1 of Petitioner's Exhibit No. 41; at the top of that page it gives the names of certain baths? A. Yes, sir.

Q. There is stated the Kohler's "Carlton", is that right?

A. Yes, sir.

Q. And that "Luxor", is that the same as the "Luxuria"? A. Yes, sir. 3

Q. Kohler's "Carlton" is the same price which you have on this sheet? A. Yes, sir.

Q. And the Standard "Luxuria" Plate P-186—can you find that in the Standard catalogue?

A. It is on page 77 of the Standard catalogue.

Q. What page is it in your catalogue? A. Page 19.

Q. Is that the tub that competes with the "Luxuria"?

A. Yes, sir.

Q. This price list says that it is known as the "Luxor"; is that the same as the "Luxuria"? A. Yes, sir. 4

Mr. GROSVENOR: Sheet No. 2 shows the per cent. of increased cost and the prices which you would have obtained if you had entered into this agreement; the per cent. of increased cost on these baths is as follows: General Zone, 1.8; Zone #1, 1.7; Zone #2, 10.7; Zone #3, 6.8; Zone #4, 9.4; Zone #5, 11.4; Zone #6, 9.7; Zone #7, 10.8; Zone #8, 10.4; Zone #9, 9.7; Zone #10, 7.3; Zone #11, 9.7.

1 The third sheet is for the "5 Year Guaranteed Bath 5 Ft. Size Kohler's 'Hanover' Plate A-50 Standard's 'Morris' Plate P-176". Is the "Morris" the Standard's tub with which Kohler's "Hanover" competed? A. Yes, sir.

Q. At or about June 1, 1910, what were the price you quoted to the jobbers about the same as the Standard's were? A. As far as we knew they were.

Q. This sheet is calculated in the same manner as the others?

A. Yes, sir; they are all calculated in the same way.

2 Mr. GROSVENOR: I will then ask the stenographer to write into the record the percentages on each of these sheets.

Mr. NOBLE: Are you offering each of those sheets in evidence?

Mr. GROSVENOR: No, I only want to read into the record the percentages shown on each sheet.

Mr. NOBLE: I object to that unless each calculation is put in. How else can we test it?

Mr. GROSVENOR: Well, I will offer the 38th sheet
3 in evidence and I will ask the stenographer to write into the record the per cent. which has been calculated as has been testified to and which appears at the bottom of every sheet.

Mr. NOBLE: That will be all right.

Mr. GROSVENOR: I offer these 38 sheets, then, as Petitioner's Exhibit No. 256.

Tabulations referred to was then marked and filed as "Petitioner's Exhibit No. 256."

Mr. GROSVENOR: The per cent. of increased cost on the baths named on page 3 are as follows:
4 General Zone, 1.4; Zone ±1, 1.4; Zone ±2, 8.9; Zone ±3, 6.2; Zone ±4, 8.6; Zone ±5, 9.4; Zone ±6, 7.7; Zone ±7, 7.5; Zone ±8, 7.2; Zone ±9, 6.5; Zone ±10, 5.3; Zone ±11, 5.3.

Page 4, "2 Year Guaranteed Bath 5 Ft. Size, Kohler's 'Trimo' Plate A-90", the increased per cent. is: General Zone, 6.8; Zone ±1, 6.6; Zone ±2, 21.7; Zone ±3, 15.4; Zone ±4, 18.4; Zone ±5, 21.7; Zone ±6, 18.4; Zone ±7, 18.8; Zone ±8, 17.5; Zone ±9, 15.0; Zone ±10, 13.6; Zone ±11, 13.1.

Page 5, "Non-Guaranteed Bath 5 Ft. Size Kohler's 'X' Tub Standard's 'Nemo', the increased per cent. of cost is: General Zone, 8.0; Zone #1, 7.8; Zone #2, 27.5; Zone #3, 18.7; Zone #4, 22.5; Zone #5, 27.0; Zone #6, 22.4; Zone #7, 22.7; Zone #8, 21.1; Zone #9, 18.9; Zone #10, 16.4; Zone #11, 15.5. 1

Page 6, "Pedestal Lavatory Kohler's 'Fairfax' Plate a-151 Standard's Plate P-500-¾", the per cent. of increased cost is: General Zone, 16.8; Zone #1, 16.7; Zone #2, 26.8; Zone #3, 20.9; Zone #4, 24.5; Zone #5, 28.4; Zone #6, 23.9; Zone #7, 25.7; Zone #8, 25.4; Zone #9, 26.8; Zone #10, 22.8; Zone #11, 26.3. 2

On page 7, "Pedestal Lavatory Kohler's 'Waldorf' 20 x 28" Plate a-175 Standard's 'Copley' 18 x 27 P-500-¼", the per cent. of increased cost is: General Zone, 8.8; Zone #1, 8.8; Zone #2, 15.2; Zone #3, 11.5; Zone #4, 12.8; Zone #5, 15.7; Zone #6, 11.9; Zone #7, 13.2; Zone #8, 14.9; Zone #9, 14.0; Zone #10, 11.0; Zone #11, 13.2.

On page 8, "Square Flat Back Lavatory 18 x 24" Slab, 10" Back Kohler's 'Emmet' Plate A-332 Standard's 'Ophir' Plate P-514", the per cent. of increased cost is: General Zone, 6.9; Zone #1, 6.8; Zone #2, 20.9; Zone #3, 12.6; Zone #4, 16.3; Zone #5, 19.8; Zone #6, 15.7; Zone #7, 18.9; Zone #8, 19.2; Zone #9, 18.0; Zone #10, 12.8; Zone #11, 18.0. 3

On page 9, "Half-Circle Apron Lavatory Without Back 18 x 21 Slab Kohler's 'Walton' A-566 Wolff's 'Deland' H-4032", the per cent. of increased cost is: General Zone, 12.0; Zone #1, 12.0; Zone #2, 25.8; Zone #3, 17.9; Zone #4, 21.3; Zone #5, 26.0; Zone #6, 19.3; Zone #7, 22.4; Zone #8, 21.3; Zone #9, 22.2; Zone #10, 22.2; Zone #11, 19.7. 4

On page 10, "Half-Circle Flat Back Lavatory with Apron 18 x 21" Slab. 8" Back Kohler's 'Bretton' Plate A-580 Standard's 'Othello' Plate P-535", the per cent. of increased cost is: General Zone, 8.6; Zone #1, 8.6; Zone #2, 23.9; Zone #3, 14.6; Zone #4, 18.8; Zone #5, 26.9; Zone #6, 20.1; Zone #7, 25.6; Zone #8, 25.7; Zone #9, 26.4; Zone #10, 20.3; Zone #11, 27.4.

Page 11, "Half-Circle Flat Back Lavatory Without

Apron 16 x 19" Slab. 6" Back Kohler's 'Clare' Plate A-606 Standard's 'Crescent' Plate P-558", the per cent. of increased cost is: General Zone, 10.7; Zone #1, 10.6; Zone #2, 26.6; Zone #3, 16.7; Zone #4, 20.1; Zone #5, 24.9; Zone #6, 18.5; Zone #7, 20.5; Zone #8, 21.3; Zone #9, 21.3; Zone #10, 13.6; Zone #11, 20.9.

Page 12, "Half-Circle Flat Back Lavatory Without Apron 18 x 21" Slab. 8" Back Kohler's 'Clare' Plate A-608 Standard's 'Beverly' Plate P-552", the per cent. of increased cost is: General Zone, 8.2; Zone #1, 8.2; Zone #2, 22.6; Zone #3, 14.0; Zone #4, 18.6; Zone #5, 24.7; Zone #6, 17.7; Zone #7, 20.3; Zone #8, 20.8; Zone #9, 19.2; Zone #10, 16.5; Zone #11, 17.4.

Page 13, "Half-Circle Apron Lavatory with Sides 18 x 21" Slab. 6" Back. Kohler's 'Altona' Plate A-642 United States Sanitary Mfg. Plate B-132", the increased per cent. of cost is: General Zone, 17.5; Zone #1, 17.4; Zone #2, 29.0; Zone #3, 20.9; Zone #4, 25.8; Zone #5, 31.4; Zone #6, 24.6; Zone #7, 26.4; Zone #8, 25.8; Zone #9, 26.0; Zone #10, 22.2; Zone #11, 24.3.

Page 14, "Corner Apron Lavatory 19" on Side. 8" Back. Kohler's 'Osborne' Plate A-672 Standard's 'Anglo' Plate P-531", the per cent. of increased cost is: General Zone, 7,0; Zone #1, 7.0; Zone #2, 19.7; Zone #3, 12.2; Zone #4, 15.4; Zone #5, 19.7; Zone #6, 14.1; Zone #7, 16.6; Zone #8, 15.8; Zone #9, 16.4; Zone #10, 12.3; Zone #11, 15.4.

Page 15, "Corner Apron Lavatory 16½" on Side. 6" Back. Kohler's 'Kingston' Plate A-692 Standard's 'Berlin' Plate P-529", the per cent. of increased cost is: General Zone, 7.4; Zone #1, 7.1; Zone #2, 17.7; Zone #3, 11.1; Zone #4, 14.5; Zone #5, 19.0; Zone #6, 13.5; Zone #7, 16.1; Zone #8, 15.4; Zone #9, 15.1; Zone #10, 10.9; Zone #11, 14.3.

Page 16, "Corner Non-Apron Lavatory 19" on Side. 8" Back. Kohler's 'Oliver' Plate A-712 Standard's 'Everett' Plate P-554", the per cent. of increased cost is: General Zone 6.9; Zone #1, 6.9; Zone #2, 19.2; Zone #3, 11.9; Zone #4, 16.5; Zone #5, 21.3; Zone #6, 15.5; Zone #7, 18.5; Zone

#8, 18.5; Zone #9, 19.4; Zone #10, 13.3; Zone #11, 19.5. 1

Page 17, "Corner Non-Apron Lavatory 16½" on Side. 6" Back. Kohler's 'Kennedy' Plate A-732 Standard's 'Yale' Plate P-559", the per cent. of increased cost is: General Zone, 23.1; Zone #1, 23.0; Zone #2, 40.5; Zone #3, 29.4; Zone #4, 34.8; Zone #5, 45.1; Zone #6, 35.1; Zone #7, 40.4; Zone #8, 40.3; Zone #9, 40.2; Zone #10, 33.8; Zone #11, 41.0.

Page 18, "Half-Circle Non-Apron Flat Back Lavatory 14" Slab. 12" Basin. 8" Back. Kohler's 'Midget' Plate A-752 Standard's 'Alva' Plate P-561", the per cent. of increased cost is: General Zone, 12.6; Zone #1, 12.6; Zone #2, 25.3; Zone #3, 17.8; Zone #4, 21.5; Zone #5, 26.8; Zone #6, 21.8; Zone #7, 24.2; Zone #8, 22.9; Zone #10, 19.4; Zone #11, 22.0. 2

Page 19, "Corner Non-Apron Lavatory 15" on Side. 5" Back. Kohler's 'Bijou' Plate A-762 Standard's 'Aida' Plate P-562", the per cent. of increased cost is: General Zone, 11.0; Zone #1, 11.0; Zone #2, 26.4; Zone #3, 17.9; Zone #4, 22.0; Zone #5, 27.8; Zone #6, 21.6; Zone #7, 25.4; Zone #8, 24.2; Zone #9, 24.5; Zone #10, 18.9; Zone #11, 24.6. 3

Page 20, "Alcoves Design Drinking Fountain With Strainer and Connection to Wall Kohler's 'Geneva' Plate A-989 Standard's 'Alcove' Plate P-636-A", the per cent. of increased cost is: General Zone 11.2; Zone #1, 11.1; Zone #2, 15.1; Zone #3, 12.8; Zone #4, 12.8; Zone #5, 12.4; Zone #6, 10.9; Zone #7, 10.1; Zone #8, 9.4; Zone #9, 11.1; Zone #10, 10.2; Zone #11, 7.6.

Page 21, "One-piece Roll Rim Sink 20 x 30" Size Kohler's Plate A-1036 Standard's Plate P-1200", the per cent. of increased cost is: General Zone, 15.1; Zone #1, 15.0; Zone #2, 29.0; Zone #3, 20.9; Zone #4, 24.5; Zone #5, 31.3; Zone #6, 23.5; Zone #7, 26.4; Zone #8, 25.8; Zone #9, 22.1; Zone #10, 20.9; Zone #11, 25.6. 4

Page 22, "Roll Rim Sink Combination with Back and End Pieces. 20 x 30 " Size Kohler's Plate A-1066 Standard's Plate P-1208", the per cent. of increased

cost is: General Zone, 14.4; Zone #1, 14.3; Zone #2, 27.9; Zone #3, 19.8; Zone #4, 22.3; Zone #5, 28.6; Zone #6, 21.6; Zone #7, 21.5; Zone #8, 21.7; Zone #9, 16.1; Zone #10, 15.4; Zone #11, 17.3.

Page 23, "Roll Rim Sink Combination with two 18" long Enameled Drain Boards and long Back, on 2 Painted Legs and 2 Painted Brackets 20 x 30" Size. Kohler's Plate A-1076 Standard's Plate P-1233", the per cent. of increasedc cost is: General Zone, 26.6; Zone #1, 26.4; Zone #2, 38.2; Zone #3, 30.8; Zone #4, 32.9; Zone #5, 38.4; Zone #6, 31.5; Zone #7, 31.7; Zone #8, 31.8; Zone #9, 27.0; Zone #10, 27.8; Zone #11, 28.3.

Page 24, "Roll Rim Sink Combination with Enameled Drain Board and long Back, on Painted Wall-Brackets—20 x 30" Size Kohlers' Plate A-1086 Standard's Plate P-1220", the per cent. of increased cost is: General Zone 12.0; Zone #1, 12.0; Zone #2, 21.5; Zone #3, 15.8; Zone #4, 17.7; Zone #5, 22.5; Zone #6, 16.9; Zone #7, 18.7; Zone #8, 17.2; Zone #9, 14.7; Zone #10, 13.4; Zone #11, 15.4.

Page 25, "Interchangeable Drain Board 20 x 24" Size. Kohler's Plate A-1125 Standard's Plate P-1256-A", the per cent. of increased cost is: General Zone, 14.1; Zone #1, 14.0; Zone #2, 29.5; Zone #3, 20.1; Zone #4, 24.5; Zone #5, 32.5, Zone #6, 25.0; Zone #7, 28.7; Zone #8, 27.3; Zone #9, 23.2; Zone #10, 20.1; Zone #11, 31.4.

Page 26, "Regular Flat Rim Kitchen Sink 18 x 30" Size. Kohler's Plate A-1140 Standard's Plate P-1415", the per cent. of increased cost is: General Zone, 8.1; Zone #1, 8.1; Zone #2, 23.1; Zone #3, 14.0; Zone #4, 16.3; Zone #5, 23.7; Zone #6, 16.6; Zone #7, 18.9; Zone #8, 19.2; Zone #9, 14.5; Zone #10, 12.3; Zone #11, 17.4.

Page 27, "Round Corner Kitchen Sink 20 x 30" Size. Kohler's Plate A-1156 Standard's Plate P-1418", the per cent. of increased cost is: General Zone, 8.3; Zone #1, 7.8; Zone #2, 18.6; Zone #3, 12.9; Zone #4, 16.1; Zone #5, 20.8; Zone #6, 15.9; Zone #7, 18.0; Zone #8, 17.8; Zone #9, 16.1; Zone #10, 13.7; Zone #11, 18.6.

Page 28, "Deep Pattern Roll Rim Sink Back 12"

high, 30" long. Kohler's Plate A-1170 Standard's Plate P-1421", the per cent. of increased cost is: General Zone, 4.9; Zone #1, 4.9; Zone #2, 16.0; Zone #3, 10.4; Zone #4, 12.8; Zone #5, 18.0; Zone #6, 11.8; Zone #7, 12.4; Zone #8, 11.6; Zone #9, 7.7; Zone #10, 7.4; Zone #11, 9.1. 1

Page 29, "Shallow Pattern Roll Rim Sink Back 12" high, 30" long. Kohler's Plate A-1176 Standard's Plate P-1420", the per cent. of increased cost is: General Zone, 5.4; Zone #1, 5.3; Zone #2, 16.0; Zone #3, 10.9; Zone #4, 13.8; Zone #5, 19.3; Zone #6, 11.7; Zone #7, 11.7; Zone 8, 12.3; Zone #9, 8.1; Zone #10, 7.0; Zone #11, 10.0. 2

Page 30, "One-piece Roll Rim Slop Sink. 16 x 20 x 12" Size. On Trap Standard. Kohler's Plate A-1200. Standard's Plate P-1340", the per cent. of increased cost is: General Zone, 3.8; Zone #1, 3.7; Zone #2, 12.6; Zone #3, 7.5; Zone #4, 9.0; Zone #5, 13.0; Zone #6, 7.6; Zone #7, 8.3; Zone #8, 7.7; Zone 9, 4.2; Zone #10, 3.5; Zone #11, 3.8.

Page 31, "Roll Rim Slop Sink with Separate Back. 16 x 20 x 12" Size. On Trap Standard. Kohler's Plate A-1206. Standard's Plate P-1350", the per cent. of increased cost is: General Zone, 6.3; Zone #1, 6.3; Zone #2, 15.2; Zone #3, 10.0; Zone #4, 11.2; Zone #5, 13.6; Zone #7, 8.9; Zone #8, 7.4; Zone #9, 5.7; Zone #10, 4.9; Zone #11, 3.4. 3

Page 32, "Flat Rim Square Slop Sink with End Outlet and N. P. Strainer 16 x 20 x 12" Size Kohler's Plate A-1230 Standard's Plate P-1402", the per cent. of increased cost is: General Zone, 11.1; Zone #1, 11.1; Zone #2, 20.2; Zone #3, 15.9; Zone #4, 18.1; Zone #5, 21.5; Zone #6, 17.6; Zone #7, 19.9; Zone #8, 19.7; Zone #9, 17.3; Zone #10, 9.9; Zone #11, 19.0. 4

Page 33, "Flat Rim Laundry Tubs on Pedestals with Soap Cups and Plugs Kohler's Plate A-1260 Standard's Plate P-1296", the per cent. of increased cost is: General Zone, 8.7; Zone #1, 8.6; Zone #2, 25.2; Zone #3, 15.2; Zone #4, 17.7; Zone #5, 18.0; Zone #6, 13.4; Zone #7, 11.9; Zone #8, 11.8; Zone #9, 8.2; Zone #10, 12.5; Zone #11, 7.6.

Page 34, "Closet Bowl with Brass Flush Spud

Kohler's Plate A-1299 Standard's Plate P-831", the per cent. of increased cost is: General Zone, 6.6; Zone #1, 6.6; Zone #2, 13.6; Zone #3, 10.0; Zone #4, 11.6; Zone #5, 14.7; Zone #6, 11.9; Zone #7, 12.5; Zone #8, 12.3; Zone #9, 9.7; Zone #10, 8.8; Zone #11, 11.6.

Page 35, "Large Size Low Closet Tank Kohler's Plate A-1321 Standard's Plate P-942", the per cent. of increased cost is: General Zone 8.1; Zone #1, 8.1; Zone #2, 18.2; Zone #3, 12.3; Zone #4, 13.2; Zone #5, 16.5; Zone #6, 11.2; Zone #8, 8.8; Zone #9, 4.2; Zone #10, 6.0; Zone #11, 2.2.

Page 36, "Roll Rim High Closet Tank 20 x 10 x 10" Size Kohler's Plate A-1337 Standard's Plate P-946", the per cent. of increased cost is: General Zone, 23.4; Zone #1, 23.3; Zone #2, 39.1; Zone #3, 29.1; Zone #4, 32.0; Zone #5, 39.1; Zone #6, 30.5; Zone #7, 32.2; Zone #8, 31.4; Zone #9, 27.0; Zone #10, 27.6; Zone #11, 28.4.

Page 37, "One-piece Roll Rim Public Urinal With Wall Hanger and Brass Beehive Strainer 30" Size Kohler's Plate A-1476 Standard's Plate P-1692", the per cent. of increased cost is: General Zone, 12.8; Zone #1, 12.6; Zone #2, 23.2; Zone #3, 17.8; Zone #4, 20.9; Zone #5, 26.3; Zone #6, 21.4; Zone #7, 25.8; Zone #8, 25.7; Zone #9, 23.7; Zone #10, 21.0; Zone #11, 27.4.

Mr. GROSVENOR: I want to state that I will withdraw Petitioner's Exhibit No. 209 which has been heretofore offered in evidence and the testimony referring to it, except insofar as the question refers to the position of the witness Kroos with the Kohler Company.

Mr. NOBLE: All right.

BY MR. GROSVENOR:

Q. The fourth page of this tabulation known as Petitioner's Exhibit No. 256, gives the calculation for the two year guaranteed baths, Kohler's "Trimo"; what type of bath has the most extensive sale in the trade?

Mr. NOBLE: Is this witness qualified to answer that question?

BY MR. GROSVENOR: 1

Q. Do you follow the sales of your goods? A. Yes, sir.

Q. You know the extent of sales of your various articles? A. Yes, sir.

Q. Which have the most extensive sales?

A. The two year guaranteed baths.

MR. NOBLE: Is that the one just called the "Trimo"?

THE WITNESS: Yes, sir.

Q. Is this the kind of tub advertised on page 1 of Schedule 2 of the price list known as Petitioner's Exhibit No. 41? 2

A. Page 1 of Schedule 2; yes, sir; that is the tub.

Q. The fifth sheet is for the non-guaranteed bath, five foot size, Kohler's "X" tub, Standard's "Nemo"; that is according to the Resale Plan, Schedule 1, page 1; is that right? A. Yes, sir.

Q. And the "Nemo" of the Standard is the one with which your "X" tub competed? A. Yes, sir.

Q. Sheet No. 6, is a calculation made out for a pedestal lavatory, Kohler's "Fairfax", Plate A-151, Standard's Plate p-500-¾; those two lavatories were manufactured and sold by your Company and the Standard Company and for competing lavatories? A. Yes, sir. 3

Q. That is made out according to the Resale Plan, Schedule 1, page 2-B, is that right? A. Yes, sir.

Q. Which of your lavatories have the largest sale?

A. A-608.

Q. Is that a pedestal lavatory?

A. No, sir; that is a half-circle flat back lavatory without apron, 18 by 21 inches slab, 8 inch back.

Q. Are those calculations for that lavatory shown on this Exhibit No. 256? 4

A. Yes, sir; on page 12 of the exhibit.

Q. You have made up estimates for these five year guaranteed baths, pedestal lavatories, square flat back lavatories, half-circle apron lavatories, half-circle flat back lavatories, other kinds of lavatories, drinking fountains, roll rim sinks in one piece, and so forth; do all these percentages show increases? A. Yes, sir.

Q. You would have obtained if you had sold your goods according to the Resale Price List? A. Yes, sir.

1 Q. Now, these increases to which you have testified on the various articles range between what limit, that is, give the lowest and the highest?

A. About 1-1/2 or 1-8/10 to approximately 34 per cent.; they range all the way between there in the various zones on the various articles.

Q. Look at the percentages on page 17 of this Exhibit No. 256 and state what is the highest percentage given there? A. 45-1/10 per cent.

Q. Then the per cent. on that page, "Corner Non-Apron Lavatory 16-½" on Side. 6" Back. Kohler's 'Kennedy' 2 Plate A-732 Standard's 'Yale' Plate P-559. Jobber's Cost. Resale Plan. Schedule 4. Page 28 (B)", range from what?

A. From 23 to 45-1/10 per cent.

Q. 23 per cent. in Zone 1 to 45 per cent. in Zone 5?

A. Yes, sir.

Q. Is that a lavatory which is very largely sold that is, Plate A-732?

A. Yes, sir; it is not the most staple lavatory.

Q. But it is largely sold? A. Yes, sir.

Q. Look at sheet 23 for "Roll Rim Sink Combination With Two 18" Long Enameled Drain Boards, Kohler's 3 Plate A-1076, Standard's Plate P-1233", such as appear in the Resale Plan on what page?

A. Page 27, Schedule 4½, Item E.

Q. The percentage of increases on that article ranges between what— A. 26.4 and 38.4 per cent.

Q. Is that article Plate A-1076 sold very largely?

A. No, sir.

Q. Look at page 36 of this Exhibit No. 256, being the percentages for "Roll Rim High Closet Tank 20 x 10 x 10" Size Kohler's Plate A-1337 Standard's Plate P-946", and state between what figures the percentages range on that 4 sheet? A. From 23.3 and 39.1 per cent.

Q. From these last sheets you could state the percentages range between what figures?

A. They range all the way from 1½ per cent. to 45 per cent. on the entire line.

Mr. GROSVENOR: I think that is all.

CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Kroos, what is your business?

A. Secretary of the J. M. Kohler Sons Company. 1

Q. And what are your duties as such?

A. Well, office work mostly.

Q. I mean with especial reference to the cost system of J. M. Kohler Sons Company.

The WITNESS: The cost system?

Mr. NOBLE: Yes, or whatever you do.

A. I am connected with the Sales Department mostly; my main duties are in connection with sales, shipments, orders and quotations.

Q. Is it not part of your duty to work out the cost 2 of manufacture in J. M. Kohler Sons Company?

The WITNESS: The manufacturing costs, you mean?

Mr. NOBLE: Yes.

A. Not particularly.

Q. What do you do, check them?

Mr. GROSVENOR: His examination did not go into the cost of manufacture.

Mr. NOBLE: I am merely trying to find out what the experience of the witness is. Will you read the question? 3

The stenographer then read the question.

A. No, sir.

Q. Are you familiar with the cost of manufacture?

A. I am familiar with our cost.

Q. You are familiar with your costs?

A. Yes, sir; but I am not fully acquainted with the details.

Q. Are you familiar with the cost of manufacture of any other manufacturing factory where sanitary enameled iron ware is made? A. No, sir. 4

Q. Then you don't know what profit, if any, other manufacturers make on the sale of their goods? A. No, sir.

Q. As I understand you, you said your duties at Kohler & Sons in respect to the question of cost, consists in taking figures furnished to you and working out quotations and invoices and things of that character? A. Yes, sir.

Q. Now, in this Exhibit, known as Petitioner's Exhibit No. 256, which consists of an index and thirty-seven pages, there are in the left hand column various statements, such

1 as "Jobber's Cost. Resale Plan. Schedule 1. Page 32" and "Resale List—Resale Carload Discount" and "7-½% Jobber's Discount on Invoice"; the words that appear in that column on all the other pages? A. Yes, sir.

Mr. GROSVENOR: That is excepting insofar as the references to the schedules and pages of the Resale Price Book is concerned.

Mr. NOBLE: Yes, sir.

The WITNESS: Yes, sir; they are all drawn up in the same manner— on the same basis.

2 Q. What do the words "Resale List" mean?

A. That is the list price for the article enumerated on that sheet as shown in the Resale Price Book.

Q. Of what date?

The WITNESS: Do you mean the date of the sheet?

Mr. NOBLE: The date of the Resale Price Book.

A. June 25th—I think that is the date those sheets bear.

Q. When you refer to the "Resale Price Book", you mean Petitioner's Exhibit No. 41, don't you?

3 A. If that is the number of the exhibit.

Q. Just look and see if that is it?

A. Yes, sir; that is the book.

Q. What does "Resale Carload Discount" mean?

A. That is the discount shown in that book for that article.

Q. For carload lots?

A. Yes, sir; it is the carload discount.

Q. Are all these sheets where you used the words "Resale Carload Discount" based upon the carload discount price? A. Yes, sir.

4 Q. Is your calculation based upon that price?

A. Yes, sir; on carload shipments.

Q. Did you treat this resale carload discount price as including freight?

The WITNESS: I don't quite understand your question.

Mr. NOBLE: Did you treat this resale carload discount price as including freight?

The WITNESS: I don't quite understand your question. 1

Q. You have an item here "Resale List, General Zone, Pittsburgh, 83.75"?

A. Yes, sir.

Q. In the next line you say "Resale Carload Discount, 45%, $37.69"?

A. Yes, sir.

Q. And on that you make a calculation—

A. Yes, sir.

Q. And in making that calculation did you treat the resale list price as including the freight? 2

A. The freight is deducted there on that sheet.

Q. Did you treat the figures $83.75 as including the freight?

A. I don't understand your question; it is a question never put to me before in that way.

Q. I am not trying to tangle you, and it may be that my language is not the language of experts on books, but I want to get at it so that I can understand it and so the Court can understand it. You have "Resale List, General Zone, Pittsburgh, $83.75"? 3

A. Yes, sir.

Q. I understand what you meant to say by that was that the licensed manufacturers have as a list price to jobbers in the General Zone, in Pittsburgh, for tubs similar to the Standard's "'Albion', Plate P-205", the list price of $83.75?

A. Yes, sir; that is the list price at which the manufacturer invoices that bathtub.

Q. Does that $83.75 include freight?

A. The manufacturer allows the full freight.

Q. You did not answer my question. Does it include freight? 4

A. I answered it as I understand it.

Q. Does the figure $83.75 as you have made your calculations here, include a charge for freight?

A. The freight is allowed by the manufacturer; it is full freight allowed to the General Zone.

Q. Let us see if I can get that right: For figuring from the figure $83.75, the list price, did you treat those figures as though they included an item for freight?

A. I would like to answer your question, Mr. Noble, but

1 I don't understand it and don't know exactly what information you are seeking.

Q. I am merely trying to find the basis of your calculations?

A. The freight item is taken care of a little further down in the calculation.

Q. Does $83.75 include any figure, or is there any amount included in that figure for the purpose of covering a charge for freight. Do you understand that?

A. Yes, sir; I understand your question now.

Q. You have stated the figure $83.75 as including an al-
2 lowance for a sum of money for freight?

A. Yes, sir.

Q. Do you know what figure is included there for freight?

The WITNESS: That depends upon where the goods are shipped.

Mr. NOBLE: I am talking about General Zone, Pittsburgh?

A. As far as my calculations are concerned, it is freight from Sheboygan to Pittsburgh.

Q. But in this Exhibit No. 256, you compared, you said,
3 on page 1 and on the other pages, the Kohler goods with the Standard Company's goods. Now I ask you do you know what figure is included, or what sum is included in the figures $83.75 for General Zone, Pittsburgh, for freight upon the Standard's "Albion" bathtub?

A. No, sir; that reference to the Standard's "Albion", was put in there to show the competitive figure with the Licensed Manufacturers' article calculated in the basis upon which we made out that sheet.

Q. Well, what allowance did you include in these figures, $83.75 for freight for Kohler goods?

4 A. $1.38, which is shown on the fourth column down from the top.

Q. That is the freight from Sheboygan to Pittsburgh, is it? A. Yes, sir.

Q. Upon a tub weighing how much?

A. Upon a tub weighing 575 pounds.

Q. The figure being at the rate of 24 cents per hundred weight?

A. Per hundred weight, yes.

Q. Then you do not pretend to say at all, on any of these

sheets, if I understand your last answer, anything about the cost of goods manufactured by the licensed manufacturers? 1

A. We do not; neither do we pretend to say anything about the cost of the goods manufactured by the Kohler Company, as far as the cost of the goods is concerned.

Q. You have used the phrase "Cost to Jobber"; I am not talking about the manufacturer's cost, but in the same terms as you have used it on these sheets, and I ask you again whether in the figures which you have stated here on the various pages of this exhibit you have meant the Court to understand, when it comes to examine it, that any of these figures applied to the goods of the licensed manufacturers? 2

Q. You have not meant that?

A. No, sir.

Q. You have not meant that ?

A. No, sir; that sheet is calculated on Kohler goods, that is the price Kohler obtains on Kohler goods if he had would have gone into this arrangement, as well as the price we were obtaining at that time and the percentage of of advance, and it applies only to Kohler goods.

Q. And what the Kohler Company would receive for its goods?

A. Yes, sir. 3

Q. And you do not pretend to show, if I understand you, by your calculations here that the goods of the licensed manufacturers would cost the jobbers in any of the zones which you have covered, the prices which you have here arrived at?

A. No, sir; those are the prices on Kohler goods.

Q. I come next to the item which you call "Crating"; what does that cover?

A. It covers the charge made by the manufacturer for crating the bathtub.

Q. These Kohler "Czarina" tub and the Standard "Albion" tub are what are known as high grade tubs? 4

A. Yes, sir.

Q. They are the best manufactured by those companies respectively, or among the best, anyhow?

A. They are among the best; yes, sir.

Q. And are guaranteed for five years durability?

A. Yes, sir; they are five year guaranteed baths.

Q. You do not want to commit yourself on that guarantee part, but they are known as five year guarantee baths?

A. Yes, sir; they are known in the trade as five year guaranteed baths.

Q. Is it the custom of the Standard Company to ship their high grade tubs in crates or in boxes?

A. That I don't know.

Q. Do you know as to any of the manufacturers except the Kohler Company?

A. No, sir.

Q. What is your information on the question?

A. As we understand, they crate them unless they are finished on the exterior, and then they box them, and so do we.

Q. You mean finished by painting?

A. Yes, sir; exterior zink paint is applied.

Q. All high grade bathtubs are so finished, are they not?

A. Not at the factory; there are some that are ordered in that manner, but there are a great many of them shipped with just an ordinary coat of paint, and when they are shipped in that way they are crated.

Q. Is it not true that the Standard Company and many of the manufacturers ship their tubs boxed, whether they are painted or not, because it is such a high grade fixture?

A. Not as far as we know.

Q. Can you state what per cent. of the Kohler's "Czarinas" are shipped by you finished by you on the outside as you have stated?

A. No, sir; I could not.

Q. Could you state that without being exact, just generally?

A. No, sir; I think there are as many of them shipped with just an ordinary coat of paint as there are with the finish, because in a great many cases the owner wants to have the tub finished himself in line with the other decorations in his bathroom.

Q. In other words, you would say that it was about half and half?

A. I would not say that; I don't want to commit myself, because I do not know what the percentage is.

Q. What is your judgment of the number of high grade finished bathtubs which you ship out?

A. Well, that is pretty hard to answer; I do not like to answer that question because I am not positive about it.

Q. Would it be as much as 40 per cent., approximately?

A. It would be pretty hard to answer that, approximately, even, because I have not the percentage of decorated baths which we ship in mind as compared with the other ordinary baths. 1

Q. But those which are finished, you box?

A. Yes, sir.

Q. Now, in your sheet here you haven't taken the case of those tubs which you box, have you?

A. No, sir.

Q. What is your charge for boxing?

A. Two dollars.

Q. You have examined Petitioner's Exhibit No. 41, and I ask you if that figure of two dollars is not the same as the charge for boxing by the Standard Company of their "Albion" tub? 2

A. I cannot answer that without referring to the Resale Book.

Q. Well, the figure of two dollars for boxing is one that is well known in the trade, is it not?

A. Yes, sir.

Q. So if you have in your calculations here shown the instances where you boxed these high grade fixtures, your results would naturally have been different? 3

A. If they had been boxed, they would have been decorated on the exterior and there would have been an additional charge for the decorating.

Q. So that your results would have been different?

A. The results would have been different, I suppose; I do not know, because I have not figured it out.

Examination Suspended.

Adjourned until the following morning, Wednesday, December 14, 1910, at 10.30 o'clock. 4

1 Post Office Building,
Chicago, Ill., December 14, 1910.

Pursuant to adjournment the taking of evidence for the Petitioner was resumed in the Post Office Building, in Chicago, Illinois, on the fourteenth day of December, 1910, at 10.30 o'clock A. M.

OSCAR A. KROOS, resumed the stand for continuation of cross examination and testified as follows:

CROSS EXAMINATION BY Mr. NOBLE (continued):

2 Q. When we suspended yesterday, Mr. Kroos, I was askink you whether in the calculation you show on page numbered one of Exhibit No. 256, as to the General Zones, you would not have had to add two dollars instead of sixty cents had you shipped the Kohler's "Czarina" tub in what you have described in trade parlance as finished, for boxing?

A. Yes, sir.

Q. Then, if you had added that two dollars for boxing, your percentages for discount would have shown, of course, have shown different results?

The WITNESS: Well, if we had added—
3 Mr. NOBLE: I mean in this calculation?
The WITNESS: The resale calculation?
Mr. NOBLE: Yes.

A. Yes, the percentages of advance would have been higher, then.

Q. The percentages of advance would have been higher?

A. Yes, sir.

Q. But the dollars and cents of discount would have been greater also, would they not?

A. I don't understand that question.

4 Q. For example, if you had added to the figures $42.61 in the first column two dollars instead of 60 cents, and then had taken off from that your 7½ per cent. jobber's discount, you would have had a larger figure than $3.45 discount?

A. Yes, sir.

Q. And likewise your discount under the head of rebate, 5 per cent. for confining purchases and 5 per cent. for tonnage would have shown different figures from $2.09 and $1.99?

A. There would have been a slight difference, but only very slight; it would have made no material difference. 1

Mr. NOBLE: I move that that portion of the answer as to the materiality of the difference be stricken out and later when we come to dollars and cents the witness can state what the difference was and allow the Court to judge whether it was material or not.

Q. Now, on the next line "Freight Allowance", that means what?

A. The amount of freight we would have allowed on that shipment. 2

Q. Based on how many pounds?

A. Based on 575 pounds.

Q. That is the weight of the Kohler's "C'zarina" tub?

A. Approximately, yes, the shipping weight.

Q. Is that the weight of the Standard's "Albion" tub?

A. As far as we know, according to the price book.

Q. If you were told that the weight of the "Albion" tub was 640 pounds and not 575, and you were making your calculation on that basis, your freight allowance would not have been $1.38, but it would have been a larger amount, would it not? 3

A. Yes, the sheets, however—

Q. I will ask the question; don't volunteer anything. The freight allowance means, you say, the amount of freight which you allow on the shipment; translate that into ordinary language?

Mr. GROSVENOR: He did not say that: It is the freight allowance allowed by the contract. In other words, the bathtub is put f.o.b. on the train and then the jobber or the receiver of that bathtub pays the freight, and then when the manufacturer makes out the bill he allows for the freight from the shipper. 4 That is from the point of shipment to destination.

Mr. NOBLE: That is all I wanted. I wanted to get the testimony which counsel has just given on the record. I understand that, but I wanted to get it on the record.

Q. The words "Freight Allowance" mean that upon the bill which is sent the jobber he is credited with what you call "freight allowance"; is that correct?

A. Yes, sir.

Q. So that the jobber himself pays the freight; is that correct?

A. The manufacturer allows it and the manufacturer pays it when the shipment arrives.

Q. It does not come out of the manufacturer's pocket?

A. Yes, it does, practically; the manufacturer allows it to the jobber.

Q. What do you mean by saying that he allows it to the jobbers? Do you mean that he deducts that from the price of the tub?

A. He deducts it from the price of the tub; yes, sir.

Q. Is it not true that every jobbing point in the General Zone is a free delivery point?

A. Full freight allowance to all these points; yes, sir.

Q. Full freight is allowed?

A. Yes, sir.

Q. That comes out of whose pocket?

A. It comes out, practically, of the manufacturer's pocket, because he allows the freight on the invoice.

Q. Then the jobber does not pay the freight, but the manufacturer pays the freight?

A. The jobber pays the freight when the shipment arrives at its destination.

Q. Then the destination is not a free delivery point?

A. The manufacturer who ships the goods to a delivery point in the General Zone, he has to allow the freight on that shipment if it amounts to 200 pounds or over.

Q. Who actually pays that freight?

A. I believe I have stated that.

Q. Who actually pays the freight?

A. Why, the manufacturer pays the freight, the shipper.

Q. What did you mean to say a moment ago, when you said that the jobber pays it on its arrival?

A. The transportation company sends him a bill for the freight on the shipment and he pays the company, but the manufacturer allows that freight on the invoice.

Q. In the price which you first charged on your resale list, $83.75, you have included that freight charge as part of your price?

A. It was deducted—

Q. You do not understand me: In the resale list which you have here as $83.75, you have included the amount of

money which it cost to ship the bathtubs to one of the free 1
delivery points in the General Zone, have you not?

A. I told you when you asked that question first I did not fully understand your question. As I interpret it, it was just simply a case of whether the net freight charges were embodied in that price or whether they were not. They were embodied for the reason that we allowed it later on; if they were not embodied, then the freight allowance would not have been shown a little later on down on that sheet.

Q. Well, I want to get the meaning of this matter straight, as you have put it on this sheet of paper?

A. Yes, sir. 2

Q. And I ask you again, does the resale list price of $83.75 upon the "Czarina" bathtub, to the General Zone, include a charge for the freight?

A. As I understand your question, it does.

Q. Please answer yes or no, whether it does or not, as used by you?

A. I have not the same understanding of the question as you have. Such a question has never been put to me before.

Q. You made these calculations or checked the calculations in this Exhibit No. 256, did you not?

A. Yes, sir. 3

Q. And this figure of $83.75 is part of the calculation which you have made?

A. Yes, sir.

Q. Tell me the items which go to make up that figure of $83.75 in the calculations made by you?

A. The list price which is shown in the Resale Price Book on the fivt foot tub like our "Czarina" baths, without the crate, and there is nothing stated in the Resale Price Book on that sheet with regard to the freight allowance.

Q. But in the calculation which you have made here, the result is what you call a net cost to the jobber in that column 4
under that resale plan, figures being $37.75, I want to know whether when you start off with the figure $83.75 you have treated it as including a charge for the freight?

A. We have allowed the freight a little ways down, you know, Mr. Noble; I have answered that question three or four times.

Q. You have not answered this question and I want to know what you have included in the figure of $83.75. What is included in that figure?

1 Mr. GROSVENOR: It is stated there "Resale Price List"; the witness has testified as to the resale price list.

Mr. NOBLE: The witness has testified as to these figures. I want to get from the witness what element has treated as being included in the figure $83.75, in order that I may determine whether his results of $83.75 as the net cost to the jobber is correctly calculated. I will ask the stenographer to read the witness my last question. I think the witness will understand it now.

2 The stenographer then read the question.

A. The statement there "net cost to jobber", you possibly do not interpret that in the same way as we do. As we testified, this sheet shows the net price we would have obtained, and by net cost to jobbers that figure $37.75 is the net price which we would have obtained from a jobber on that bathtub if we had gone into the combination and sold accordingly to the resale price. We do not attempt to show by that sheet how much of an advance the jobber would have had to pay us if we had gone in there, but we attempt to show how much of an advance we would have gotten and,
3 you are trying to arrive at what advance the jobbers pay. Those sheets are not calculated on that basis.

Q. As I understand you now, you do not attempt to show by any of these calculations what the jobber would have had to pay you more or less than he had paid you at that time, but only that the net price which you would have received had you taken the license and as you interpret the license would have been the figures which you show there?

A. Yes, sir; that is the idea exactly.

Q. This does not show that the jobber would have had to pay any more?

4 A. No, sir; we don't attempt to show that, and I have not testified to that effect.

Q. Now, you have made a calculation here where you say that according to the Resale Plan, had you accepted it, you would have received from a jobber for the "Czarina" tubs in the General Zone, $37.75?

A. Yes, sir.

Q. That calculation is obtained in that first column?

A. Yes, sir.

Q. Your calculation on this Resale Plan on all these sheets is made in the same way? 1

A. Exactly on the same basis.

Q. So what you say as to this column and as to the calculations and results applies to all the illustrations which you have given of the result of the Resale Plan, does it not?

A. Yes, sir; on all these sheets which have been worked out.

Q. Now, in this calculation which you say you have made to show what the Kohler Company would have gotten out of a "Czarina" tub shipped to Pittsburgh, you have started off with what you call the Resale List of $83.75 and you afterward deduct a certain amont for freight. Please tell me whether in the figures $83.75 there is any charge or amount of money included in that for the freight? 2

A. We had to deduct the freight in order to get at the net price we obtained for the tub, and that is all we are trying to show.

Q. All right. Is there any freight included in that charge of $83.75?

A. Your question is not at all clear to me. I do not know at what you are trying to arrive. The question has never been put to any one as to whether the price included freight. 3

Q. Then you do not know whether the figures $83.75 include any charge under this Resale Plan for freight? Answer yes or no?

A. I don't understand the question. I will not answer it yes or no unless I understand the question.

Q. Did you treat this figure $83.75 as though it included such a charge?

A. That $83.75 was taken from the Resale Price Book, Schedule 1, Page 32, and according to that price sheet it includes nothing but the bare tub without any fittings or anything else. 4

Q. Then, you have treated this as though it did not include any charge for freight?

A. I have treated it exactly as covering the items specified on that price list.

Q. Do you understand that they include anything for freight?

A. It is not so stated on the sheet.

Q. Do you understand that they include any item for freight?

1 A. I don't understand that.

Q. So, in making the calculation you have not treated the figure $83.75 as though it included anything for freight—if you understand, as you just testified—that according to the price list no item of freight is included?

A. The price list does not say anything about the freight, that is the price list on that specific article; that is, the sheet that was taken from.

Mr. NOBLE: My question is a perfectly simple one, it is perfectly clear what I mean.

The WITNESS: It is not to my mind.

2 Mr. NOBLE: I only want to get the facts on which you base your calculation.

The WITNESS: I have stated what that list price includes.

Q. Do you mean to say that $83.75 does not include any charge for freight, as you understand it?

A. As I stated, that list price was taken from Page 32 of Schedule I, of the Price Book, and there is not freight included on that list.

Q. Then you did not treat the $83.75 as including freight?

3 A. We took care of the freight later on.

Q. Then, as you understand the figure $83.75, do they or not include any charge for freight?

A. I answered that.

Q. Answer it again. What is your understanding?

A. Our understanding is that it includes what is stated on that price sheet.

Q. And freight is not included on that?

A. It is not on that price sheet.

Q. Then do you understand that you did not include the freight in that figure $83.75?

4 A. It includes what is stated on that price sheet.

Q. Then, please enumerate those items?

A. (Reading): "Five year guaranteed baths, 4½ and 5 inch roll rim with base. List price, five foot tub, $83.75."

Q. Now, having read those items, again I ask you whether in the calculations made by you, you have understood or treated the figures $83.75 as including any item for freight?

A. I cannot answer you in any different way from what I have.

Mr. NOBLE: Read him the question, please. 1

The stenographer then read the question.

Mr. NOBLE: Will you please answer that?

The WITNESS: I gave you the answer. I told you I could not answer that in any other way than I did before.

Q. If the figure $83.75 do include an item for freight, then would it not follow that these calculations, based upon that figure, arrive at an incorrect result, if you have treated them in the manner which you have said?

A. If we have treated the list $83.75, as including the articles specified on the sheet— 2

Mr. NOBLE: Only.

A. (Continuing): Only, we certainly would have to allow the freight because according to the resale price full freight is allowed.

Q. Then, the result $37.75 would be modified?

A. No, sir.

Q. According to the Resale Price Book, as you understand it and as you have applied it to your calculations here in Exhibit No. 256, have you understood that the discounts are taken off from the gross or how? 3.

A. We interpreted it in this manner—

Q. (Interrupting): When you say "we" whom do you mean, yourself?

A. Yes, sir; the Kohler Company.

Mr. NOBLE: Well, you are testifying and I want your testimony.

A. (Continuing): The resale carload discount and the 5 or 7¾ per cent., according to the article, as per clause 1 of the License Agreement, which is allowed by the manufacturers on the invoices, is deducted from the carload lots, resale list, and then the crating charge is added for such goods as the crating charge applies to, and then the freight allowance is deducted and then two 5 per cent. rebates, one for confining purchases to the licensed manufacturers and complying with the conditions of the license agreement and the other for tonnage; the tonnage we figure for the maximum allowance of 5 per cent., based on $30,000. 4

Q. If the correct interpretation of the Resale Price were that the $83.75 included an item for freight, and from that

1 the discount of 45 per cent. was taken off for carload discount, and to that result were added the charge for boxing or the charge for crating, as the case might be, and the jobber's discount of 7½ per cent. on invoice were taken off from that, you would reach a different result from that reached in your calculations, would you not?

The WITNESS: I cannot say without cauculating it.
Mr. NOBLE: Then, calculate it.
The witness did as requested.

A. Five cents difference on the tub.

2 Q. So that the calculation as shown here is incorrect on that basis, starting on that basis?

A. There is a slight difference of five cents per tub interpreting the resale price in that manner.

Q. If, instead of sixty cents being charged for crating you charged for boxing, the difference would be still greater, would it not? A. On that particular calculation, but—

Q. That is all I am talking about, that particular calculation; wouldn't it be different?

A. Certainly; there would be $1.40 difference, at least.

Q. Passing to your next item "Freight Allowance", I

3 ask you whether or not Pittsburgh and Buffalo are not both free delivery points? A. Yes, sir.

Q. And don't you sell at the same price to jobbers at both places?

A. That pertains to our business, of course, does it not?

Mr. GROSVENOR: You are referring to his calculations according to the Resale Plan?

Mr. NOBLE: Of course, I don't want to enter into his private business.

Q. According to your interpretation of the Resale Plan,

4 would you sell to jobbers in those two free delivery points at the same price?

A. Zone 1 prices apply on shipments to points in the General Zone—

Q. Why do you arrive at the result of $37.75 at one place and $37.91 at another place?

A. That means what we would obtain from the jobber; the freight rate from Sheboygan to Buffalo is less than it is from Sheboygan to Pittsburgh; in other words, we would obtain more for the tub.

Mr. GROSVENOR: That is if you shipped according to the Resale Plan? 1

The WITNESS: Yes, sir.

Q. Then, the words "Net Cost to Jobber", are misleading? They mean the net price received by Kohler & Company?

A. The net prices that would have been received by us under that Resale Plan.

Q. Is it not a fact generally that bathtubs are sold at all the free delivery points by manufacturers, not by you alone, at the same prices to jobbers?

A. I don't understand that. 2

Q. Is it not true that class for class of tubs that the manufacturers sell at free delivery points to jobbers at the same price, that is, all sell in Pittsburgh at the same price and all in Buffalo or Washington and so on?

A. Well, the manufacturers, as we interpret the Resales Plan and License Agreement, the licensed manufacturers all sell at the same price.

Q. Now going down to the second sub-division of page one headed "Kohler's Price, June 1, 1910". The list is put at $58.50? A. Yes, sir.

Q. Have you treated that as including any item for freight? 3

A. We show the freight allowance there, right underneath it.

Q. Have you treated the figure $58.50 as including any item for freight? Answer yes or no.

A. I cannot answer it, because as I stated, I do not understand it. Such a question has never been put to me whether or not this includes freight.

Q. And you don't know whether the Kohler list includes freight?

A. Our list does not specify whether it includes freight. 4

Q. And you don't know whether it does or not?

A. We allow the freight to the jobber, of course.

Q. Do the figures $58.50 include any charge for freight?

A. The "Czarina" bathtub is charged for $58.80 without any fittings or anything else.

Q. And as you understand it, the figures $58.50 do not include any items for freight?

1 A. I would like to answer you but I don't know how to answer that question, as I do not understand it.

Q. These calculations here do not pretend to show what the jobber could in any way sell the goods for?

A. No, sir.

Q. There is no intention here to show that there would be any raise in price by the plumber to the public according to these calculations? A. No, sir.

Q. What you have said applies to all the sheets of Exhibit No. 256?

A. Yes, sir; they are all worked out on the same basis.

2 Q. Now, will you turn to your calculation, say Zone #5, to Texas Common Points; what is the list according to your interpretation of the Resale Plan at those points?

The WITNESS: The list?

Mr. NOBLE: Yes.

A. $83.75.

Q. What is the Resale carload discount as you understand it, at those points? A. 36 per cent.

Q. That would leave your first result at $53.60, would it not? A. $53.60; yes, sir.

3 Q. Do the figures $53.60, as you understand it, according to the Resale Plan, include any charge or item for freight?

A. I am under the impression that I had made that perfectly clear to you.

Q. That you do not so treat it?

A. No, sir; I did not say that.

Q. I ask you that.

A. I said that I was under the impression that that point had been made perfectly clear to you, as we show the freight allowance right down in the fourth column there.

4 Q. Let me ask you a general question to see if we can get nearer to an understanding: Is it not so that if a manufacturer took his manufacturing costs and added to them a percentage of what are commonly called overhead charges, those overhead charges including administration and selling and then adding a percentage for profit only, in making up his list price, and then allow full freight, if it would not wipe out his profit, if any, if he shipped a long distance?

The WITNESS: Will you read the question to me?

The stenographer then read the question. 1

Mr. GROSVENOR: I object to that inasmuch as it inquires about manufacturing costs and these sheets do not deal with that at all, but only are calculated to show what the Kohler Company would have received under that Resale Plan. I object to it also on the ground that it is irrelevant.

Mr. NOBIE: There is no attempt to find out what the manufacturing costs are, or what the profits are, but the object is to ascertain whether or not the figures $53.60, used by the witness in his calculation, were not treated by him as including freight. 2

The WITNESS: I have answered that question about six times, and I cannot answer it in any other way.

Mr. NOBLE: Will you read the question again?

The stenographer then read the question.

A. I cannot answer that question because I am not familiar with what other manufacturers are doing or making up their lists.

Q. Then, in making up your calculations here and applied to the Kohler's goods, would it not result in the Kohler Company receiving very much less profit on its goods if they shipped to San Francisco, in Zone #10 than if they 3 shipped to the General Zone, if the freight had not been included in the list price?

A. It is a slight difference in the net amount which we obtain.

Q. On this calculation would there not be a very great difference in the freight in those two cases?

A. About 13 cents per hundred weight.

Q. One being 24 cents and the other being $1.50 per hundred weight? A. No, sir.

Q. According to your calculation here it is?

A. No, sir; 37½. 4

Q. No, it says $1.50?

A. That is under the Resale Plan.

Mr. NOBLE: That is what I am speaking of. Mr. Stenographer, will you read the question? Apply them to the calculation of what the Kohler Company would have received if they had adopted the Resale Price Agreement, and say if there would not have been a great difference?

1 The stenographer then read the question referred to.

The WITNESS: There would be a difference there on account of the difference in the freight rate, but that is taken care of in the discount under the Resale Plan to more than offset the difference in freight.

Q. Explain how that difference is taken care of in the discount?

A. The carload discount on that bathtub, according to to the Resale Plan is 45 cents, and according to Zone 10 it is 34 cents.

2 Q. That takes care of the difference in rates, doesn't it?

A. It does more than that, I believe.

Q. But it does take care of the difference in freight?

A. Of course, we were not interested in the Resale Plan and we can testify what this difference should take care of.

Q. But if this difference does not take care of the difference in freights then the profit that would be received by the manufacturers under the Resale Plan would greatly differ between the various zones, would it not?

A. As I said, we were not interested in the compilation of that price list and I cannot say how they looked on

3 these discounts.

Q. Then you dealt with discounts and figures about which you did not know the meaning?

Q. We dealt with figures and discounts taken from the Jobber's License Agreement.

Q. But you are not abie to say what those figures mean, are you?

A. We were not interested in the compilation of them.

Q. But you do not know what they mean?

A. We know what they mean according to out interpretation of them.

4 Q. But you don't know according to your interpretation whether you have included an allowance for freight in the list price or not?

A. These sheets show very plainly what the list price included.

Q. Which sheets? A. In the price book.

Q. That is in Petitioner's Exhibit No. 41?

A. And our calculations were based on that.

Q. And your interpretation did not include an item for freight in the list price? A. I did not say that. 1

Q. Then, did your interpretation of the Resale Price Book which is Petitioner's Exhibit No. 41, include an item for freight in the figures $83.75, that being the list price? I am now asking for your interpretation.

A. I have answered that question about six times and I refuse to answer it. I tried to explain that such a question has never been put to me, whether a catalogue list price includes a freight allowance.

Q. I call your attention to page 32, which you say is the page in Petitioner's Exhibit No. 41, if I understand you— A. (Interrupting): Yes, sir. 2

Q. And I ask you to look at that page and tell me from that page any items that are included in the list price which appear there on that page?

A. (Reading): "Five year guaranteed baths, 4¾ and 5 inch roll rim with base similar to Day-Ward 'Rico'; Iron City 'Modello'; Kohler's 'Czarina'; Standard 'Albion'; United States 'Colona'; Wolff 'Neptuna'", and the illustration of the bath on the side shows what it includes.

Q. Is not that just a description of the articles on which the prices are given? 3

A. It is a description of the articles which are included in the list price.

Q. Is there any description on that page which shows what items are included in the list price of $83.75, that is, items of price? A. I just enumerated that.

Q. Are there any items of price which are shown?

A. I do not understand your question.

Q. Then, do you understand that the discount, as you have used them in this calculations and applied to the Resale Plan, takes care of the freight allowance or of the charge for freight? A. Yes, sir. 4

Q. You do so understand?

A. Yes, sir; but not the catalogue list.

Q. Then, let's go back to Zone #5. As I understand you, what you have thus far said as to Zone #5 is that the list price for all Texas Common Points is $83.55; that there is a resale carload discount of 36 per cent., amounting to $30.15, which leaves $53.60 as the net price so far?

A. Yes, sir.

Q. Will you please turn to the appropriate page in

1 Petitioner's Exhibit No. 41 and add to that $53.60 the list charge for boxing? A. That makes it $55.95.

Q. Will you please deduct from that the 7½ per cent. jobber's discount on invoice? A. $51.75.

Q. What is the discount? $4.20, is it not?

A. Yes, sir; $4.20.

Q. And then the net result would be how much so far? A. $51.75.

Q. Now, will you next deduct the 5 per cent. for confining purchases; how much is that? A. $2.58.

Q. And your result would be? A. $49.17.

2 Q. Now, will you next deduct the 5 per cent. discount for tonnage, based on purchases of $30,000; how much is that discount? A. $2.45.

Q. What would your result be? A. $46.72.

Q. You next take off from that result of $46.72, the freight allowance at $1.22 per hundred weight, on the Standard's "Albion" tub which I will ask you to assume weighs 640 pounds? A. $7.80.

Q. That is the freight? A. Yes.

Mr. GROSVENOR: I object to this change of tubs and to the change of weights. It has nothing to do
3 with the prices on the Standard's "Albion" tub, but it is simply a calculation of what the Kohler people would receive on their own tub if they calculated the price according to the Resale Plan, and to change the tubs here, of course, changes the calculation to the tub of another manufacturer. As has been repeatedly testified, we are not going into the cost of the Standard's "Albion" tub, but simply of the Kohler's "Czarina" tub, and the percentages calculated at the bottom have simply to do with the Kohler's "Czarina" tub.

4 Mr. NOBLE: The question was asked the witness because on the top of page 1 and the other pages, the witness has taken as example various articles, a Standard article and a Kohler article, and I merely wanted to show how they would come out.

Mr. GROSVENOR: Do I understand that the weight of the "Albion" tub differs from the "Czarine"?

The WITNESS: The weight of the "Czarina" is 575 and the "Albion", according to the Resale Price Book

is 640 pounds. We computed those tables on our tubs and used those weights. 1

By Mr. Noble:

Q. Your calculation of weights on your tub is crated weight, and the "Albion" is boxed, is it not?

A. I don't know.

Q. What is the weight of your "Czarina" tub boxed?

A. I don't know.

Q. The result you arrived at after taking off the freight there was what? A. $38.92.

Q. Now, this $38.92 which you arrive at as a result of that calculation is the amount which the manufacturer receives? A. Yes, sir. 2

Q. Start back from the beginning of that calculation, now, as to Zone #5, and show me what that tub would cost the jobber delivered at his house according to the Resale Plan?

A. We do not attempt to show what the tub will cost the jobber or what any of those articles would cost the jobber. We only attempt to show the prices he would have obtained under that Resale Plan if we had gone into that arrangement, the prices we were obtaining then and the percentage of advance. 3

Mr. Noble: Mr. Stenographer, will you read my question again?

The stenographer then read the question.

A. I refuse to answer that question because we do not attempt to show the advance that a jobber would have to pay or the jobber's price or anything like that. We only attempt to show the price we would have obtained.

Q. In other words, you are unwilling to have your calculation tested?

4

Mr. Grosvenor: No, I object to that on the ground that you are asking him to make a different calculation.

Q. You are unwilling to have your calculation tested?

A. No, sir.

Q. I ask you to make this calculation because it will show the percentages of advances which you have shown here are totally incorrect—

1 A. (Interrupting): We can prove those percentages there.

Q. (Continuing): —that they are totally incorrect as applied to licensed ware, applying to that the method of calculation shown by Exhibit No. 41, which you have used and from which you have testified to these various percentages of increase. Now, answer that question?

The WITNESS: Will you read it?

The stenographers then read the questions.

Mr. NOBLE: Will you make that calculation?

2 A. The calculation which you asked us to make today is an entirely different proposition. All we attempted to show by those sheets is the net amount which we would have obtained under the Resale Plan if we had gone into the combination. We also show the price we obtained at the time and the percentage of advances which we would have obtained, if we had gone into the combination.

Q. I asked you to make the calculation for the purpose of showing that the Standard's "Albion" tub does not cost the jobber any more now than it cost him before the Standard Company accepted this License Agreement?

3 Mr. GROSVENOR: Let me make the objection here to the question of counsel for the Defendant on the ground that it has to do with the cost, as stated by him, of the Standard's "Albion" tub to the jobber, and I have not introduced these tables for the purpose of showing the cost of the "Albion" tub and none of the testimony relates thereto. Counsel for Defendants may call witnesses for the Defendants for that purpose. The whole purpose of these tables is to show the price that the Kohler Company would receive for the "Czarina" tub according to the Resale
4 Plan.

Mr. NOBLE: As interpreted by the witness?

Mr. GROSVENOR: Yes. If counsel wishes calculations in respect to the Standard's "Albion" tub, he can call his own witnesses for that purpose. It is an entirely different subject.

Mr. NOBLE: If counsel for Government means to say that he does not introduce this Exhibit or the testimony of Mr. Kroos in respect thereto for the

purpose of showing that there has been any increase in price to the jobber or to the public upon the Standard's "Albion" tub, or other licensed manufactured goods, then counsel for Defendants does not desire to press the question further. 1

Mr. GROSVENOR: Counsel for Government states that this Exhibit No. 256 is introduced for the purpose of showing in respect to these 37 articles the prices which the Kohler Company was receiving for them on June 6th, the time the license arrangement went into effect, and also the prices which they would have received if they had entered into the license arrangement, the last being calculated from the Resale Price List. The separate sheets of the exhibit state certain articles manufactured by competitors of the Kohler people who have entered into the licensing arrangement, the articles of those competitors being, as stated, competing articles to the articles manufactured by the Kohler people, which articles appear on these sheets. The Exhibit does not state prices for any of the Standard goods or any of the licensed manufacturers, either on June 1st, 1910, or at any time subsequent thereto or prior thereto. 2 3

Mr. NOBLE: Does counsel for Government mean by the language used when he says "prices received by the Kohler Company", the amount which was received by the Kohler Company?

Mr. GROSVENOR: I mean the actual amounts received by the Kohler Company for the articles enumerated according to the sales system in effect and enforced by the Kohler Company, that system being enforced by the Kohler Company on June 1st and today, the Exhibit also showing the amounts which the Kohler Company would have received for those same articles if they had entered into the licensing agreement, and had calculated their prices according to the Resale Plan as the witness understands those prices to be applied. 4

Mr. NOBLE: And as he has explained in his testimony?

Mr. GROSVENOR: Yes.

Mr. NOBLE: Then I have no more questions.

1 RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. What do you mean in the trade by the "List price"?

A. The list price is the price subject to a discount—

Q. Is it an arbitrary figure which the manufacturers adopt, not as a standard, but as a fixed figure and then the actual price to the jobber is arrived at by making certain discounts on that list price? A. Yes, sir.

Q. The list price referred to and which appears on these sheets and in Petitioner's Exhibit No. 41, is that arbitrary figure which the manufacturers have adopted as the list price? A. Yes, sir.

2 Q. And the price to the jobbers is arrived at by making certain deductions or discounts?

A. Yes, sir; and adding crating charges.

Q. But the list price simply means this arbitrary figure?

A. Yes, sir.

Q. And that is the custom in many trades, that is, of having a list price? A. Yes, sir.

Q. You have made in these sheets a deduction for freight allowance? A. Yes, sir.

Q. By that I mean you have subtracted, from the amount which you would have received, certain freight al-

3 lowances, is that correct?

A. We have deducted the freight allowance which we would have had to make under the Resale Plan in the various zones.

Q. In other words, from your bill you render to the jobber there is a deduction made of the freight allowance?

A. Yes, sir.

Q. So that the amount which these tables show you would have received from the jobbers are lessened by the freight deduction? A. Yes, sir.

Q. If you had not made these freight allowances, then

4 the amounts which you would have received would have been greater? A. Yes, sir.

Q. In other words, the figures stated in the horizontal line, opposite the words "Net cost to Jobbers", would have been greater?

A. If the freight allowance had not been deducted; yes, sir.

Q. And that is true in each case? A. Yes, sir.

Q. Counsel for Defendants asked you certain questions

about the rules in this price list which is Petitioner's Exhibit No. 41, and your understanding of them; you do not understand, I take it, how those rules were arrived at? 1

A. I don't understand how they were computed or how this price list was compiled.

Q. All you attempted to do was to work out the application of those rules? A. Yes, sir.

Q. You do not know why they were adopted?

A. No, sir.

Q. You have simply, in making your calculations, applied the rules as they were stated as you understood them?

A. Yes, sir; as we interpreted them. 2

RE-CROSS EXAMINATION BY Mr. NOBLE:

Q. Do you prepare the list prices of J. M. Kohler Sons Company?

A. I don't know that that has any bearing on the case, the list prices are shown in our catalogue.

Q. You have testified in reply to counsel for Government that your list price and the list price as it appears in Exhibit No. 41 is an arbitrary figure. Now, I personally do not think you mean that reply. I want to find out if my understanding is correct? 3

A. I have testified that the list price is a figure adopted by the trade from which to allow the discounts and other deductions in order to arrive at the net price.

Q. Now, that list price is compiled, is it not—it is the result of a compilation? A. Yes, sir.

Q. So it is not an arbitrary figure but the result of a compilation? A. Yes, sir.

Q. That is true as to list prices in the trade generally, so far as you know, is it not? A. Yes, sir.

RE-RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Look at Sheet 1 of Petitioner's Exhibit No. 256; the list price there of the "Czarina" tub of the Kohler Company is $58.50; is that so? A. Yes, sir. 4

Q. And the list price of the resale plan is how much?

A. $83.75.

Q. On the second sheet the list price of the "Carlton" is $55. A. Under the Resale Plan.

Q. And the list price of the Kohler people is? A. $37.

Q. Those list prices mean nothing as far as the actual price received is concerned?

A. No, sir; the discounts vary that apply on them.

Q. So the list price is simply an arbitrary figure?

A. It is an arbitrary figure inasfar as the discounts vary that apply to them; of course, the list prices are compiled; they are calculations made to get at the list price. The list price of one manufacturer on an article is $85 and another manufacturer lists it at $45, and of course the discounts, naturally, will vary.

Q. I mean the list price has nothing to do with the amount received by the manufacturer?

A. It has nothing to do with the net price received by the manufacturer.

RE-RE-CROSS EXAMINATION BY Mr. NOBLE:

Q. Of course, is it not true that the list price has this to do with the list price finally received, that the two bear a definite relation to each other, and that definite relation is measured by the discounts at freight allowance?

A. Of course, the greater the list price the greater the discount.

Q. If you were to start from a net price and calculate back to a list price you would add various sums which are measured by various discounts, if you made up your calculation in that way?

A. Of course, I am not familiar with the way the other manufacturers compile their list prices, whether they start with the net price which they finally obtain, and then add to it to get the price or not—I cannot testify to that.

Q. But there is a definite relation between the net and list price and that is measured by the various discounts, is it not?

A. Of course, the discounts applied to the list will give you the net price.

Examination concluded and signing of deposition waived by agreement of counsel for respective parties.

EDWIN L. WAYMAN, a witness heretofore produced and sworn on behalf of the Petitioner, recalled for further direct examination, testified as follows: 1

DIRECT EXAMINATION BY Mr. GROSVENOR (continued):

Q. I show you a circular on your letterhead addressed to the jobbing trade, dated May 31; did you send that out to the various jobbers to whom you sent the other circulars which have been put in evidence? A. Yes, sir.

Mr. GROSVENOR: I offer that in evidence and ask that it be marked and filed as "Petitioner's Exhibit No. 257." 2

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 257."

Mr. GROSVENOR: That letter reads as follows:

"May 31st, 1910.

"*To the Jobbing Trade:*

"Referring to my letter of May 19th regarding the Resale Price List covering Licensed Sanitary Enameled Iron Ware, and my letter of the 28th, would state that is has developed at the last moment, owing to several changes and additions in the Price List, that it is a physical impossibility for the printer to complete the printed matter in the time contemplated. 3

"This Price List will, therefore, become effective on the morning of June 6th, and the printed matter will be in your hands on that date. I regret exceedingly the circumstances, but the fact that a Price List containing approximately 300 pages with over 35,000 discount calculations, giving delivered prices at all Jobbing Points in every State, and equalizing rates to approximately 4,000 towns, has been compiled and printed in almost four weeks' time, speaks for itself. 4

"Yours very truly,

"E. L. Wayman."

Q. I show you certain telegrams to the Chandler Pump Company, dated June 17, and July 21, and signed by you, and a letter dated July 15, addressed by you to them and a letter to you by them, dated July 20, and ask you if you

remember writing those telegrams and that letter and receiving the other letter?

A. Yes, sir; I think those have been introduced before.

Mr. GROSVENOR: I will offer all those in evidence as "Petitioner's Exhibit No. 258."

Letters and telegrams referred to were then marked and filed as "Petitioner's Exhibit No. 258."

Mr. GROSVENOR: Those read as follows:

"Pittsburg, Pa., June 17-10.

"Chandler Pump Company,
Cedar Rapids, Iowa.

"Please wire me at my expense if you have executed or intend to execute Jobbers license agreements.

"E. L. Wayman."

"Pittsburg, Pa., July 21, 1910.

"Chandler Pump Co.,
Cedar Rapids, Iowa.

"Referring my letter fifteenth could you arrange to meet me in Chicago La Salle Hotel, ten A. M. Monday morning.

"E. L. Wayman."

"July 15, 1910.

"Chandler Pump Co.,
Cedar Rapids, Iowa.

"Gentlemen:—

"I am trying to arrange a meeting of some of the jobbers in your territory who have not signed the License Agreement. Your territory is about the only exception in the whole country where any trouble seems to exist, and it would seem that a joint conference between the parties interested should have the desired result.

"Would you be willing to attend such a meeting if held in Chicago?

"Yours very turly,

"E. L. Wayman."

"July 20, 1910. 1

"Edwin L. Wayman,
Pittsburg, Pa.

"Dear Sir:—

"Replying to your favor of the 15th inst., my time is so wholly occupied I do not see how it would be possible to attend the proposed meeting in Chicago.

"It would have to be shown very clearly to us that there is no illegality connected with a deal of this kind before we would care to become a party to it, even though we were put on as equitable a basis as 2 the river towns.

"I presume you understand we are very small jobbers and it can make but little difference whether we enter into this deal or not.

"We of course are anxious to make as much profit as possible but had we signed any of the contracts that have been sent to us for our signature we cannot see it in any other light than that we would be reducing our profit.

"Yours truly."

3

Q. I show you a circular headed "Suggested form of letter to be sent to the trade, which has been approved by counsel", and ask you if that is the form of letter which you sent to the different manufacturers of licensed enameled iron ware?

A. I remember such a letter; I don't know whether I sent that out to all the manufacturers or not; it is possible that I did.

Q. That was about what time?

A. In March, as I recollect it.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 259." 4

Paper referred to was then marked and filed as "Petitioner's Exhibit No. 259."

Q. You testified that a committee was appointed on May 6th, being the same as comprised the former Price and Schedule Committee, said committee being appointed as provided in the License Agreement entered into by the

1 manufacturers on that date; have you kept any minutes of the meetings of that committee since then? A. No.

Q. Have you kept any personal memoranda as to what was done at any of the meetings?

A. No, I simply issued bulletins from time to time to the different licensed manufacturers in the shape of rulings that might either have been approved by the committee or talked about or were my own invention.

Q. Some of these bulletins were the result of actions of the committee and some were your own?

A. Yes, of the committee and myself.

2 Q. Have you those bulletins arranged in order?

A. I have them at my office, yes.

Q. Can you present them at the next meeting?

A. Yes; I wish to add, though, that those bulletins do not represent in their entirety action by the Commission because some of those bulletins were issued from time to time just by myself.

Q. You have testified that some were the result of action by the Commission? A. Yes.

Q. Now, I asked you to produce these schedules which form part of the License Agreement between you and the

3 licensed manufacturers, those agreements being introduced as Exhibits Nos. 13 to 26. Have you those schedules with you? This (indicating) is License Agreement, Exhibit No. 13, similar to the other License Agreements with the manufacturers and contains this sentence, under Paragraph 6: "All terms and conditions relative to prices and discounts now established by the Licensor and set forth in the annexed schedules and made a part hereof"; can you produce those schedules?

A. Yes, this form here (indicating) was the Jobber's License Agreement which was attached to the manufac-

4 turer's License Agreement, and in pencil or in ink—I don't remember which—these following discounts were shown in Paragraph 1, Schedule 1, 7½ per cent.; Schedule 2, 5 per cent.; Schedule 3, 5 per cent.; Schedule 4, 7½ per cent.; exceptions to Schedule 4, 5 per cent.; Schedule 4½, 5 per cent.; Schedule 6, 5 per cent.; and then on some of them I have marked the following percentages that I was calculating the Resale Prices on; by that I mean that to the then published prices of the manufacturers, to arrive at the Resale Prices, I was adding the following percentages;

Schedule 1, 15 per cent.; Schedule 2, 12½ per cent.; Schedule 3, 12½ per cent.; Schedule 4, 15 per cent.; exceptions to Schedule 4, 12½ per cent.; Schedule 4½, 12½ per cent.; Schedule 5, 12½ per cent.; Schedule 6 12½ per cent.; those percentages added to the then published prices would make the Resale prices such that with the discounts provided for in the Jobber's License Agreement, the net prices would equal about 5 per cent. below what was then known as the published prices. 1

Q. Each License Agreement of the manufacturers with you has attached to it a Jobber's Agreement with these discounts stated thereon? 2

A. Yes, but I am not positive about all of them.

Q. Where are those Jobber's Agreements?

A. I presume the manufacturers must have them if they have retained them.

Q. You did not retain a copy?

A. I retained this copy or several other copies which I had from time to time.

Q. Was there anything else attached to that License Agreement other than this Jobber's Agreement?

A. No, not that I know of.

Q. Will you look at Jobber's License Agreement which is Exhibit No. 11 on the last page; that is the part which is filled out by the manufacturer or the jobber who enters into an agreement with the manufacturer and then is sent to you, is that right? A. Yes, sir. 3

Q. Under the heading, "Discounts", there are certain blanks; those discounts which were to be filled in there are the discounts allowed by the Paragraph 1 of this Jobber's License Agreement? A. Yes, sir.

Q. And such special discounts as the manufacturers were permitted to quote under their Agreements with you?

A. Yes, sir. 4

Q. That is all discounts, whether preferential or regular discounts were to be stated there in that in that column?

A. Yes.

Mr. Grosvenor: That will be all.

Examination Suspended.

The taking of evidence was then adjourned until Tuesday, December 20, at 10.30 o'clock A. M., at the Post Office

Building, New York, for the Cross Examination of Edwin L. Wayman.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

Post Office Building,

New York, N. Y., December 20, 1910.

Pursuant to adjournment, the taking of evidence for the Petitioner, was resumed in the Post Office Building, in New York, N. Y., on the twentieth day of December, 1910, at 10:30 o'clock A. M.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General, for the Petitioner.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Defendants.

Mr. NOBLE: It will not be possible for me to take up the cross examination of Mr. Wayman today. When the hearing was adjourned in Chicago until today, it being then anticipated that Mr. Wayman's cross examination would begin at this time, I had told counsel for the Government that there would be a conference among the defendants and myself and their various lawyers on Friday and Saturday of last week; that that conference was necessary by reason of the fact that the Government had pro-

cured indictments found against these same defend- 1
ants involved in this civil suit upon the same state of facts, said indictments having been found in the Eastern District of Michigan, at Detroit. The conferences to which I referred took place, and there were a large number of lawyers present representing various individual defendants and corporate defendants. We have been able to obtain complete copies of the combination and monopoly indictments, but have not received complete copies of the indictments as to conspiracy owing to a mistake of the printing office in printing them. It was thought by myself 2
and all the counsel present that it was indispensable for the interests of these defendants that a complete examination be made of those indictments in order for counsel to advise their clients upon the situation in which they were placed both in the civil suit and in the criminal suit by reason of the finding of those indictments. This will be readily understood, because it is a matter requiring careful examination and full consideration of the authorities to determine fully what the rights of the defendants are. Between the time of the filing of the indictments and 3
the conferences at my office on Friday and Saturday of last week, it had been necessary for me to visit Washington in connection with the civil case and the criminal case to confer directly with the Assistant to the Attorney-General in charge, in order that various details might be more satisfactorily arranged, and also to go to Detroit to arrange with local counsel and with the District Attorney and the Court as to the manner of giving bail, and the details thereof, and also upon the notice of the Government to go to Chicago to attend upon the further 4
examination of one of the Government's witnesses, and for his cross examination, and for the further direct examination of the witness Wayman. The hearings in Chicago were on Tuesday and Wednesday of last week. Upon leaving Chicago I arrived at my home in New York on Thursday and went into the conferences with the various defendants and their lawyers on Friday, and those conferences have continued continuously since then. They are

now continuing, and they will continue for several days more in order to enable us to come to a satisfactory understanding of the position in which the defendants find themselves both in the criminal cases and in this civil case.

Under those circumstances I called the Special Assistant to the Attorney-General on the telephone on Monday morning, and told him that upon this state of facts here recited it would be impracticable for me to undertake the cross examination of Mr. Wayman today or at any time during the ensuing week, stating to him the reasons which I have just assigned. As I have said, the appearance of the various defendants in the criminal cases will be expected within a short time, and the nature of the pleas which they will enter, and the nature of the motions which they may make, or whatever action they may take in respect thereto, will have to be determined before that time, so that my time will be completely occupied for some time to come, that is, for the next two or three weeks. As the Record will show, and as the Examiner knows, I have had active charge of this litigation ever since the taking of testimony was begun, and before that, and there is no one familiar with the Record save myself, and fully familiar with the facts which it will be necessary for the defendants to bring out in this Record, and which should be known fully to the various counsel whose professional opinion it is necessary to have in order to determine what will be done in the criminal case. There is no one but myself to give them those facts. I have had entire charge of the matter, have examined the various witnesses for the defendants privately, have gotten their views and knowledge of the facts, and it is impossible for me to delegate that work to anyone else. I desire to say that at all times since this litigation has begun, I have endeavored to facilitate the progress of the case on the part of the Government. I have, whenever requested to do so, done everything to facilitate the efforts of the Government to take this testimony, and I am still in that state of mind and attitude, and this request for an adjournment is made

with no thought in the world of causing the Government any delay, but is just one of those circumstances which arise occasionally in the course of litigation and which makes it necessary to request this adjournment. I therefore request the Examiner to grant us an adjournment for thirty days. 1

Mr. GROSVENOR: Counsel for the Government objects to any suggestion of postponement at this time. Conferences in respect to another suit, that is, conferences of counsel regarding that suit, are certainly no ground for an adjournment. Counsel are not engaged in Court in that suit, but state that they simply desire to have conferences in regard to what they shall do in that suit. Now, referring to the facts: Counsel for Government was ready to go on with the cross examination of the witness Wayman last week in Chicago, and that cross examination was adjourned until today with the distinct understanding that it should be had here. In respect to the criminal cases, the indictments were returned on December sixth. Nothing has been done in those cases yet, and I understand bail will be given this week and pleas will be entered early in January. 2 3

I think I should call your Honor's attention to the fact that this sort of a case, that is, a civil suit under the Anti-Trust Act, is entitled to preference above other cases. There was a special act passed on February 11th, 1903, which reads: "That in any suit in equity pending or hereafter brought in any circuit court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July second, eighteen hundred and ninety, 'An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given prece- 4

dence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select."

That Act applies to the hearing of the case and it is equally clear that the taking of testimony shall be expedited as well. I have here a certificate of the Attorney-General saying that this is a suit of public importance, and one which should be expedited. I intend to file this with the Examiner. Of course, we cannot have a hearing before the Judges until the testimony has been taken, and it seems to counsel for Government, after consultation with his superior officer of the Government in charge of the case, that this request for a postponement should be denied, particularly inasmuch as this date was set and no legal excuse has been given for an adjournment. A pending criminal case is not at all ground for a postponement. If it is relevant at all, it is of importance, then, that this case should be expedited. If this case is of sufficient public importance to require a criminal suit, and the criminal suit is necessary, then the civil suit should not be brought to a stop right there. I want to call your Honor's attention now to the fact that this is simply a conference between attorneys respecting another suit. Counsel are not actively engaged on the case in open Court.

Now, counsel will not necessarily be engaged in the hearing of the testimony in this case during the whole of the day. If your Honor thinks that some consideration should be paid to the suggestion of counsel for the defendants, then we can have one hearing either this morning or this afternoon, and then continue again tomorrow. That will give counsel for defendants half a day and the evening for conference, and will not interfere with the progress of this suit. It seems to counsel for the Government that it is almost frivolous to suggest that a mere conference of counsel is sufficient excuse for the adjournment of this hearing, when it was agreed that

the cross examination of the witness Wayman should be specifically taken today. The defendant Wayman is, of course, as your Honor knows, a defendant in this case, and is in constant consultation with the attorneys for the defendants. 1

Mr. NOBLE: I object to the statement of counsel for the government when he says that Mr. Spencer, the Examiner, knows that Mr. Wayman is constantly in consultation with counsel for defendants.

Mr. GROSVENOR: Counsel for defendants has stated that he has been in constant consultation with the defendant, and therefore my statement is correct. 2

Mr. NOBLE: But you said that Mr. Spencer and everybody was familiar with those facts.

Mr. GROSVENOR: This hearing is just like any hearing of a case in Court, and a good legal reason should be suggested for the adjournment of this hearing, and not merely the convenience of counsel. The same rule applies as in any other proceeding. I do not want to be unreasonable, but I want to be perfectly fair to counsel for defendants. If they have these lawyers here in New York, I am perfectly willing to have a hearing this morning for say two hours and then tomorrow morning for two hours, and let them have the rest of the day, but we must proceed with this hearing. 3

Mr. NOBLE: In making my statement, if I did not say that the facts which apply to this civil suit also apply to the criminal suit, then it was a mistake on my part. These conferences necessarily include the consideration, and the ample consideration, of the course which the parties should take in those cases, because the facts involved in both cases are the same. There has been a suggestion that we should have a hearing today for two hours, and a hearing tomorrow for two hours, and so on. That is impracticable. We have not the time necessary to do it, and the reasonableness of my request must be apparent to the Examiner, when he knows from past experience that we have proceeded at all times to accommodate the convenience of counsel for the Government in this case. The worst situation which Mr. Grosvenor has suggested and the most important reason for 4

going on with this hearing is that the Government desires to expedite this case because the Attorney-General of the United States regards it as one of great importance. Now, that is a question to be considered by the Examiner, but the defendants certainly have a right for consideration at the hands of the Court or the Examiner, even if it brings about a little inconvenience to counsel for the Government. I say this because I want the Examiner to know that there is no desire on my part to cause any inconvenience to the Government. That is not my attitude. But, at the present time it is impossible for me to go on, and I again press my request for an adjournment for thirty days.

Mr. ROBERT R. REED (of Caldwell and Reed, of the New York Bar, representing W. B. Garvin, of the Chattanooga Bar, Tennessee, with the consent of attorneys here appearing, appears as counsel for the Cahill Iron Works, Frank H. Caldwell and John J. Mahoney, defendants, and states): The Cahill Iron Works have, on December 17th, 1910, withdrawn from any further connection with the combination and license agreement alleged in the Petition and will at the earliest opportunity ask leave to substitute and file a Supplemental Answer. The defendants named are indifferent as to the request for adjournment, provided that a reasonable opportunity shall be given Mr. Garvin, after examining the testimony, to cross examine the witness Wayman.

The EXAMINER: The only evidence which it was proposed to take at this meeting, as I understand, was the evidence of Edwin L. Wayman on cross examination. Mr. Wayman not being present, I will ask counsel for Government, who opposes the suggestion of counsel for the defendants, what suggestion he has to make.

Mr. GROSVENOR: I will ask Mr. Noble to take the stand and be sworn.

The EXAMINER: Mr. Noble, counsel for the Government has requested that you be sworn. Have you any objection to being sworn?

Mr. NOBLE: I have not been subpœnaed as a witness here, and I am appearing merely as counsel.

Mr. GROSVENOR: I want to ascertain where the witness is who was present at the last hearing, who is one of the defendants in the case, and who is one of your clients. I asked Mr. Wayman at the time if he could be here at this meeting, and if this was as convenient as Pittsburgh, and he said that it was. I now ask you to be sworn for the purpose of examining you as to why Mr. Wayman is not here, in order that the Examiner may determine this question of adjournment. 1

Mr. NOBLE: I have stated to counsel for the Government that at the various conferences which took place here— 2

Mr. GROSVENOR: I want Mr. Noble to be sworn in order that I may ask him some questions as to the absence of the witness.

Mr. NOBLE: I have stated that Mr. Wayman was here to be present at the conferences on Friday and Saturday—

Mr. GROSVENOR (interrupting): I want Mr. Noble sworn.

Mr. NOBLE (continuing): And he asked me if I would be able to cross examine him on Tuesday, and I told him that it would be utterly impossible for me to do so. I presume that Mr. Wayman went back to Pittsburgh, and I presume that Mr. Wayman is in Pittsburgh now. If the Examiner orders that the hearing proceed tomorrow, of course I will do everything in my power to get Mr. Wayman here as soon as possible. 3

Mr. GROSVENOR: I again ask that Mr. Noble be sworn.

Mr. NOBLE: I decline to be sworn in a case of this sort, as there does not seem to be any reason for it. I will state, however, that I have truthfully stated the facts. If the Examiner decides that this hearing ought to proceed, of course I will do everything in my power to have Mr. Wayman here, and I have no doubt in the world that upon telephoning to Mr. Wayman he will come on the earliest train and be here promptly. 4

Mr. GROSVENOR: Tomorrow morning for cross examination at ten o'clock?

1 Mr. NOBLE: As soon as it is possible for him to get here, of course.

Mr. GROSVENOR: If counsel for the defendants will agree to have the witness Wayman here tomorrow morning for cross examination at ten o'clock, then counsel for the Government will not object to the postponement of the hearing until that time, and will not insist upon the swearing of Mr. Noble as a witness.

Mr. HEATH: I would like to say a few words. I happen to know that yesterday, as soon as this matter
2 was in a situation so that the facts could be known, I was in the room with Mr. Noble and heard Mr. Noble tell Mr. Grosvenor over the telephone that he was telephoning to him to save him the trouble and expense of coming here to New York. Mr. Grosvenor apparently insisted and Mr. Noble afterwards hung up the receiver. Mr. Grosvenor telegraphed and said that he insisted on the hearing going on. I think that the fact that defendants' counsel telephoned to Mr. Grosvenor as soon as the facts were known shows that we wanted to expedite the matter
3 as much as possible.

Mr. GROSVENOR: Let me ask Mr. Heath if he saw the telegram which I sent from Washington yesterday stating that I would insist upon the examination of the witness Wayman going on today.

Mr. HEATH: Yes, sir; I stated that we received the telegram, and of course the only thing to be done then was to make this motion to the Examiner.

Mr. GROSVENOR: Will counsel for the defendants produce the witness Wayman tomorrow for cross examination?

4 Mr. NOBLE: I have made my motion to the Examiner, and I am awaiting his disposal of it.

Mr. GROSVENOR: The Examiner has said that he cannot decide until he knows where the witness Wayman is. You have asked for an adjournment of thirty days. You agreed once to have Mr. Wayman here, and now you have not him here.

Mr. NOBLE: I deny emphatically the false statement of Mr. Grosvenor which was just made.

Mr. GROSVENOR: I ask that Mr. Noble be sworn.

Mr. NOBLE: I am amazed at counsel for the Government losing his patience to such an extent as to make the statement which he has just made. 1

Mr. GROSVENOR: Read my statement. In what respect am I incorrect?

Mr. NOBLE: Take the word "false" out, and make the word "incorrect"; I have no desire to be disagreeable in my language. The incorrect statement was that I agreed to have Mr. Wayman here. There was no conversation between Mr. Grosvenor and myself at which I ever agreed to have him here. The fact is that when we adjourned before, counsel for 2 the Government and I both anticipated going on today with the cross examination of Mr. Wayman. There is no suggestion that that is not true, but I explained to counsel for the Government over the telephone yesterday the impracticability of doing so, and I am now making my motion to the Court on the same ground. There is no thought of anybody trying to keep Mr. Wayman away from this cross examination, and no desire to prevent him from being present. It is only the fact that I told Mr. Wayman that he need not come today that has caused 3 his absence. I told Mr. Wayman that he need not come today, because it would be impossible for me to go on with the cross examination.

Mr. GROSVENOR: I must insist that Mr. Noble be sworn as a witness in order that I may examine him as to why Mr. Wayman is not here today. This right I will waive if Mr. Noble will agree to have Mr. Wayman here tomorrow for the purpose of cross examination. Otherwise I demand it as my right to examine counsel and have him tell me why that witness is not here, for the purpose of assisting the 4 Examiner in deciding whether or not an adjournment should be granted, and if granted, until what time.

Mr. NOBLE: I have stated a number of times, and I repeat the facts about the matter.

Mr. GROSVENOR: I refuse to accept this statement, and I object to it.

Mr. NOBLE: I have also stated that if the Examiner does not care to fix the time at any remote date, I

will agree to have Mr. Wayman here at any time that the Examiner tells me to.

Mr. GROSVENOR: Tomorrow morning?

Mr. NOBLE: At any time that the trains can get him here.

Mr. GROSVENOR: I ask then, that this hearing be adjourned until tomorrow morning at ten-thirty o'clock, for the purpose of cross examining Mr. Wayman.

Mr. NOBLE: Counsel for Government having acted in the manner he has, I think it is perfectly proper for me to state on the record that during my conference over the telephone with him he told me that all he wanted to do was to get the Government's case closed, and not leave the case in an uncertain condition, due to the non-cross examination of Mr. Wayman. We understand that position fully. There is not the slightest desire on our part to leave the Government in that position. Therefore, any time that the Examiner desires to adjourn this meeting to, I am willing to notify Mr. Wayman and have him here.

Mr. GROSVENOR: I am content to adjourn until tomorrow morning at ten o'clock, and it seems to me that is right after counsel for the Government has come here and demanded that the hearing go on. The witness is not here, and the witness is a defendant. The counsel present are counsel for that witness and for that defendant. I am willing to waive the question as to why he is not here, provided that we adjourn until tomorrow morning for that cross examination, with the understanding that counsel have him here then.

The EXAMINER: Will the stenographer read Mr. Noble's last statement.

The stenographer then read the statement referred to.

Mr. NOBLE: I again ask for an adjournment.

Mr. GROSVENOR: There is nothing which I can add to my remarks. Counsel can have all of today for further conference and such time tomorrow as remains after hearing the cross examination, which can

be one session of two hours or more, whichever the Examiner may direct. 1

Mr. NOBLE: I have stated that it will be impossible for me to go on with the cross examination either today or tomorrow or any other time until we get these indictments disposed of. In making that statement, I want it understood that I am simply explaining my position. I do not mean that in any contumacious sense at all. Of course, your Honor may not know that this question of the Government proceeding under the Sherman Act, and thereafter, while the civil suit is still pending, having indictments found is somewhat novel, and in a recent case where that has been done, I am informed, a motion is now pending to bring about a complete stay until the Court shall determine which of the two cases shall proceed first. 2

Mr. GROSVENOR: What has that to do with the cross examination of a witness whose direct examination is already in?

Mr. NOBLE: The defendants certainly have a right to consider whether they will or will not—without intimating that they will not—go ahead with a civil suit under the circumstances. It is perfectly proper for them to take advice of their respective counsel, to go over the grounds very carefully and the facts involved, and determine their legal significance. Unseemly haste, even at the request of counsel for the Government, is not necessary. Nothing is to be lost by the Government by this adjournment which we have requested. As far as the expedition of this case is concerned, it has been going along with all the rapidity which the Government wanted to give to it, and this is the first time that the defendants have in any way intimated a desire to have any time given them. Now, the reason for making the request has been stated. I submit that this is entirely a reasonable attitude to take. The suggestion of counsel for the Government that we have to present a legal excuse in the sense defined by him that counsel must be actually engaged in Court in order to ask for an adjournment, is not legal practice. There is a rule in practice in New York that 3 4

1 if a case comes up on the calendar, you must be engaged in Court in order to have that case continue. That is not, however, the practice in the United States Court, and it is always a matter resting in the sound discretion of the Examiner or the Court. There is no rule requiring you to sit on any particular day or to say that because a date was set it could not be adjourned. There is a rule in equity that after permission has been granted to take testimony, the testimony shall be taken within ninety days, unless the time be extended, but that rule
2 which has been quoted by counsel for the Government is not intended to modify the rules of the Supreme Court of the United States, which are the rules governing this practice, but merely is intended to expedite the hearing of the case after the testimony has been taken, or when the case is ready that it may be preferred above the other cases which are pending.

Now, in the order appointing you the matter is left to your sound discretion.

Mr. GROSVENOR: The previous statement of coun-
3 sel for the defendants that this is the first time that any adjournment has been had at the request of counsel for defendants is not exactly so, because at the last hearing in Chicago the plaintiff, that is, the United States, was ready to go on with the cross examination of the witness Wayman, and that meeting was adjourned at that time until this date in order to accommodate counsel for the defendants.

Mr. NOBLE: Well, if my statement is inaccurate in that regard, I will correct it, of course. The Examiner realizes, of course, that these hearings have thus
4 far preceded in point of fixing times of hearings and so forth quite informally. Counsel for the Government and counsel for the defendant have fixed a date and the Examiner has been notified that that date was the convenience of counsel for both sides, and we have not insisted in any way upon the technical points as outlined by the Order, and this is the first time either side has called for the technical things. Counsel for the defendants has appeared to be anxious to accommodate as much as possible, and I do not think

that his reputation at this time should be thrust aside and disregarded. The only possible thing which the government has involved in this matter is that of getting the testimony closed. Now, whether it is closed today or some other day, cannot possibly harm them, and in view of all the circumstances counsel for the defendants should have all the time requested. 1

Mr. GROSVENOR: We are apt to lose sight here of the fact that this is a suit to enforce a law which Congress has considered and deemed most important, and it has made it plain by passing the act to which I called your Honor's attention. This is a suit for a violation of the Sherman Act, and Congress has said that cases of this character are particularly important, and it passed an Act moving the hearing of those cases from before one judge to three judges, and it said that those cases should be heard in preference to other pending cases. Counsel for the Government is simply trying to enforce and carry out the law as enacted by Congress. The Government believes that the Sherman Act in this case has been violated. Congress gives us the power to oppose such violation. It then says that counsel for the Government shall see that the case is expedited. Now, is a conference of the counsel for the defendants in another suit reasonable grounds for the adjournment of this hearing? We are not insisting on a technical point or right, but we are trying to carry out the laws of Congress, and Congress says that a suit to restrain the violation of the Sherman Act is particularly important to the people and, irrespective of whether, or not the government establishes the facts which it alleges, it is entitled to have the case heard and tried expeditiously. Congress says that the case shall be expedited and shall be heard before three judges, and then before the Supreme Court of the United States. Now, shall we adjourn this hearing, simply because counsel for the defendants wants to confer about another case when they have been conferring for four or five days? They can confer after we have concluded taking the testimony on each day. Is this suit—which Congress has declared to be of importance—is that suit entitled to no consideration, 2 3 4

not even a minute's consideration, not even an hour out of the whole day?

The EXAMINER: As the Examiner understands counsel, counsel for the Government contends that as a matter of right the taking of this testimony should continue at this time in the absence of what is considered in many Courts, the only sufficient excuse for postponement, namely the engagement of counsel in another Court. Counsel for defendants contends that the whole matter is absolutely within the discretion of the Examiner.

As I understand counsel for defendants, he asks for an adjournment of thirty days on account of conferences which he states began last Friday and which are still continuing, which conferences have been necessitated by reason of the institution of criminal proceedings against those who are parties defendant in these proceedings. Do I understand counsel correctly?

Mr. NOBLE: Yes, sir; so far as you have gone, of course.

The EXAMINER: As I understood, when the taking of testimony was adjourned last week in Chicago it was adjourned to this time and place, and I understood that to be by agreement of counsel. It was not opposed certainly by either counsel, and the adjournment was taken for a definite purpose. At that time the facts were known pretty fully. The reasons which are now urged for a postponement existed, in large part, at least, at that time; and, in view of the fact that no suggestion was then made, and the Examiner has heard of no such suggestion until now, I am inclined to think that the Examiner ought to give effect to the spirit of the Act referred to in the certificate and request of the attorney general, to which counsel for the government has referred, and which he has handed to the Examiner.

Mr. NOBLE: I do not mean to interrupt, but there is one thing which you misapprehend. The reasons for this request for an adjournment and the facts and circumstances were, of course, not known at the hearing in Chicago. They have entirely supervened since then.

Mr. GROSVENOR: The indictments were returned on December sixth. 1

Mr. NOBLE: At the hearing in Chicago counsel for the defendants announced to counsel for the Government that the conferences referred to were going to take place, and I, of course, could not tell what would happen by reason of those conferences, and I say that counsel for the Government should not be taken by surprise, but was treated, as lawyers always treat each other, with full confidence. It is not a matter of surprise to counsel for the Government knowing those facts. I make that statement to correct the misapprehension of the Examiner. 2

Mr. GROSVENOR: No, I think the Examiner was correct. I was distinctly surprised when counsel for the defendant called me up and asked for an adjournment, as I had considered it with him in Chicago and spoke of the necessity of having the testimony taken after an adjournment of only a week. It seems to me that the Examiner has stated the facts in the case correctly.

The EXAMINER: Gentlemen, is there any intermediate date that you could get together on? 3

Mr. GROSVENOR: No, I must ask for an adjournment until tomorrow, according to our understanding. We could go on today if the witness was here, and counsel has agreed to have him here tomorrow.

Mr. NOBLE: I wish to state to the Examiner that I am perfectly willing to attempt to agree with counsel for the Government upon an intermediate date. I understand that the appearance day of the defendants in the indictments will be early in January, my information being that it is the fourth. Now, within a few days after that, I could very probably go ahead. 4 Of course, you realize the Christmas holidays intervene, and it makes it difficult for people to do work then because those are times when people like to be in their own homes, and not away on legal conferences.

Mr. GROSVENOR: That is why we should start today or tomorrow, at least, and have sessions of two hours each day, and allow counsel for defendants the rest of the day for their conferences.

Mr. NOBLE: In order that the Examiner may un-

derstand the physical labor that is required of me at this time, you must appreciate that there are forty-nine of these defendants all told, indicted. There are two indictments, and these people live, I think, in ten different states of the union. Now, they have many lawyers in those various communities. The conferences cannot take place here in New York alone, but it is necessary for me to go elsewhere, and I expect to leave this afternoon, unless the Examiner requires me to stay here. That is the physical or practical situation which I wish to present. In view of that, I think the Examiner must appreciate that I am not acting unreasonably.

Mr. GROSVENOR: Counsel has stated that the reason he wants an adjournment is so that he can have these conferences here with all the lawyers who are in New York. That was the statement which he made. Now he says that he must leave town this afternoon. This whole motion for an adjournment is simply to gain time, and is not substantial.

Mr. NOBLE: Of course counsel for the Government may re-state my remarks. It is true that I said that many counsel for the defendants are here now and that conferences are proceeding. It is much more convenient, however, for counsel to have these conferences proceed at another point where we can see other men, and it is for that reason that I mentioned that we would leave town today if it was feasible.

The EXAMINER: The fourth of January is the date for the appearance?

Mr. NOBLE: I think that is the date, exactly.

Mr. GROSVENOR: I cannot see what a criminal case has to do with this one. However, I think your Honor has the situation before you, and you were summing the matter up accurately when we interrupted.

The EXAMINER: There is no question of interruption. I am very glad to get all the light I possibly can on the matter, and it is very disagreeable to me to incommode counsel on either side.

Mr. GROSVENOR: In such cases we must be governed, it seems to me, by the Acts of Congress.

The EXAMINER: I feel that I am compelled to rule in favor of an adjournment until tomorrow.

Mr. GROSVENOR: At what time, ten-thirty? 1

The EXAMINER: I want to consult the convenience of counsel for defendants as far as I may as to the hour, at any rate.

Mr. NOBLE: I have said enough for the Examiner to know that it is impossible for me to go on with the cross-examination tomorrow.

Mr. GROSVENOR: Counsel has said that he would produce Mr. Wayman tomorrow if I did not put him on oath.

Mr. NOBLE: I will do anything that the Examiner directs me to do, of course, but I made no such agree- 2
ment with counsel for the Government at all.

Mr. GROSVENOR: But you stated that on the record.

The EXAMINER: I understood you to say that you would produce or make an effort to produce Mr. Wayman tomorrow.

Mr. NOBLE: If you direct me to do so, I will do so. I always try to do what I can. I have told your Honor that I cannot go on tomorrow. I say that respectfully and not contumaciously. I want—

Mr. GROSVENOR: I suggest, then, that we adjourn until tomorrow morning, and the question can be 3
settled then.

Mr. NOBLE: When counsel for Government stops interrupting, then I will continue. I have stated frankly the situation, and Mr. Grosvenor at first said that he would not insist on going on; he told me that very frankly over the telephone, and then later sent me a telegram which has been referred to here. I thought the convenience of counsel was a matter that the Court would consider somewhat, and let it govern its action. Of course, I am disappointed at the result of the Examiner's views. 4

Mr. GROSVENOR: In the absence of any suggestion as to the hour of adjournment, I suggest that we meet tomorrow morning at ten-thirty o'clock.

Mr. NOBLE: I would like the Examiner to consider my last remarks in this connection.

Mr. GROSVENOR: By the way, there is another thing that occurs to me as a reason why we are anxious to have this cross-examination. On the hearing of a case of this sort, it is always essential to have the record

printed. This record is being turned over to the printer as quickly as possible. We have everything turned into page proof down to the cross-examination of the witness Wayman, and they cannot put any more into page proof until that also has been put into page proof, otherwise it will require the entire re-adjustment of the pages and references. I have been so advised by the Appeal Printing Company. That is another reason why we are anxious that this record should be finished. Of course, it is difficult to have these large volumes printed. We have already nine hundred and sixty type-written pages. The defendant's case will be long, and that must all be in book form before we can prepare the briefs, and if we adjourn now, that will also impede the progress of the case.

Mr. NOBLE: As far as the question of printing is concerned, it is a matter of twenty-four hours; the Appeal Printing Company so informs us. They informed us also that the Government had requested them to stop printing the exhibits until they had arrived here today.

Mr. GROSVENOR: Well, the exhibits are entirely in a separate volume. The record, however, has to be printed consecutively.

Mr. NOBLE: I still urge upon your Honor the adjournment which we have requested, at least until January, sixth, say, at ten-thirty o'clock.

The EXAMINER: I am afraid that I must stand by the ruling. I cannot please both of you gentlemen.

Mr. NOBLE: You desire me to bring Mr. Wayman here tomorrow?

The EXAMINER: Yes, sir; we will make it at ten-thirty o'clock.

Mr. GROSVENOR: We will all agree if counsel for defendants prefers to adjourn now to Pittsburgh—to go to Pittsburgh and have the hearing tomorrow morning in Pittsburgh. If Mr. Noble is going to Pittsburgh, we will not object, but we will go to Pittsburgh also and take the testimony there.

Mr. NOBLE: I have no other request to make of any character whatever.

Mr. REED: The Cahill Iron Works would not wish to be put to the trouble of employing Pittsburgh counsel on such short notice.

(At this point the hearing was adjourned until the following morning at 10:30 o'clock A. M.)

1 IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

2

Post Office Building,

New York, N. Y., December 21, 1910.

Pursuant to adjournment, the taking of evidence for the Petitioner was resumed in the Post Office Building, New York, N. Y., on the twenty-first day of December, 1910, at 10:30 o'clock a. m.

COUNSEL PRESENT:

3 EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General, for the Petitioner.
HERBERT NOBLE, Esq., on behalf of the Defendants.
ROBERT R. REED, Esq., on behalf of the Cahill Iron Works and Frank H. Caldwell and John J. Mahoney.

MR. NOBLE: Counsel for Defendants renews his motion made yesterday for a reasonable adjournment, and calls the Examiner's attention to the fact that the order appointing him provides that the said Examiner may, if necessary or convenient for the re-
4 spective parties, continue the hearings from time to time by order made and entered during any regular and noted hearing had hereunder. That provision escaped my attention yesterday, and I presume it escaped the Examiner's attention, knowing the convenience of the parties is a consideration which the Examiner has a right to bear in mind.

I also make the offer on the record to undertake the cross examination of Mr. Wayman at a subsequent time, either to be agreed upon between the

parties or to be fixed by the Examiner, at a time when he thinks, under all the circumstances, that it should proceed, and if by that time and the ensuing session thereafter, shall from day to day or as counsel agrees, the cross examination has not been undertaken and pushed to a conclusion with all reasonable dispatch, that then the cross examination of Mr. Wayman by counsel for Government be deemed waived, with the necessary consequences following from a failure to cross examine as to the standing of the direct testimony, usual in law. The further consideration, together with what was said yesterday by me, I now submit to the Examiner for his consideration and determination. 1 2

Mr. GROSVENOR: I renew the objections which I made yesterday to any adjournment or postponement of the cross examination of Mr. Wayman. The Paragraph of the order appointing the Examiner, which Mr. Noble just read to your Honors you will notice was worded, "Not convenient for the parties". That is plural. Now, it is not convenient for the Government to adjourn this hearing, as I stated yesterday, so it will only be in accordance with the order for your Honors to rule as you did yesterday. This is the cross examination of the Defendant, who has attended all the hearings of the testimony and who is in Court today, and it seems to me there is no reason why we should not go on with this cross examination. I want to say that if counsel declines to cross examine today, I shall ask for an adjournment until tomorrow, as I have one witness who is on his way here, and then if counsel for Defendants declines to cross examine, I shall close the case for the Government, as we will have completed our case after the taking of this testimony, and I shall then ask for adjournment until such a time as the Defendants desire to begin their case. That is what my course of action will be. 3 4

Mr. Wayman is here now, and if counsel for Defendants do not go on, I shall ask that we adjourn until tomorrow and then I shall call my other witness and renew my request for the cross examination of this witness, and close the Government's case. It

might appear that I am asking for the cross examination of my own witness. But, this is one of the Defendants and of course it is up to the Defendants. If they do not want to cross examine the witness, they do not have to do it. It is their privilege. We will simply close our case, and as Mr. Wayman is a Defendant he can be called when they submit their case. That is my position.

Mr. NOBLE: I would like a ruling on the motion made by me, and I presume for your convenience you would prefer to rule separately on the motions before you.

Mr. GROSVENOR: Your motion is for an adjournment to day?

Mr. NOBLE: Yes, sir; on the grounds which I have already stated.

THE EXAMINER: It seems to me that the paragraph following that one to which you called my attention gives authority for me to hold hearings on application of either party at such time as I may appoint in my discretion. But, of course, the convenience of both parties was absolutely considered last week in Chicago, when this time and place was fixed, and I do not think that I ought to modify the ruling which I made yesterday. Of course, as Mr. Grosvenor has just mentioned, this is a question of the cross examination of a witness for the Government, and as a consequence of a failure to cross examine at this time, it might be—and it is the only consequence—the closing of the Government's case without that cross examination being in. If I am in error in holding as I do, the matters would no doubt be corrected, and any rights which the Defendants have in the premises be preserved by an application to the Court which made the appointment and which provided for the taking of this testimony.

Mr. GROSVENOR: Your Honor, then, declines to grant an adjournment at this time?

THE EXAMINER: An adjournment such as was suggested yesterday.

Mr. GROSVENOR: May I ask counsel for the defense if they will go on with the cross examination of Mr. Wayman, who is present in this room at this time?

Mr. NOBLE: Before answering, I want to know if 1
the Examiner intends by the ruling which I understand him to have made to intimate that if counsel for Defendants cross examined or commenced the cross examination of Mr. Wayman at this hearing that you hold that counsel for Defendant is precluded from cross examining him?

THE EXAMINER: No, I desire to make no ruling on that point whatever; I am only stating what the consequences might be.

Mr. NOBLE: Then, your exact ruling is what?

THE EXAMINER: All I say is that I renew the 2
ruling which I made yesterday, and in that ruling was that an adjournment would be made until today, and I adhere to that.

Mr. NOBLE: Then, I want to make a motion today for the adjournment of the cross examination of Mr. Wayman for a reasonable time, suggesting that under the circumstances heretofore stated in the record, a reasonable time is two or three days after the fourth of January, 1911.

Mr. GROSVENOR: I renew my objections to that motion which I stated yesterday. 3

THE EXAMINER: My ruling will be to overrule the motion.

Mr. GROSVENOR: Now, let me ask counsel for Defendant whether he will proceed with the cross examination of Mr. Wayman, who is present in the room at this time?

Mr. NOBLE: Counsel for Defendant presents respectfully to the Examiner that it is oppressive to require him under the circumstances stated to proceed with the cross examination of Mr. Wayman today, and respectfully suggests that the Examiner 4
should not exercise the power, if he possesses it, and respectfully presents that he does not possess the power, to order that the cross examination of Mr. Wayman proceed upon any penalty of being foreclosed from cross examining him at any future date, such as was perhaps intimated by the Examiner, but as he said not intended as ruling.

THE EXAMINER: No, if I have not been entirely

clear, I do not mean to say that would be the consequence of my ruling, but I do say that that would be as far as the consequence of that ruling could as far as I can see, possibly go.

Mr. NOBLE: I renew my protest against the Examiner requiring the cross examination of Mr. Wayman to proceed today and I ask him if he does require the cross examination to proceed?

Mr. GROSVENOR: There has been a motion for an adjournment and that motion was denied. I understand that the Examiner cannot force Mr. Wayman to take the stand. I would like to put Mr. Wayman on the stand and ask him some questions as to how the situation is today in respect to the case, which I think will help us in arriving at a conclusion.

Mr. NOBLE: I asked for a ruling on my request?

Mr. GROSVENOR: The cross examination has not been started and I have some questions that I want to ask Mr. Wayman before I turn him over for cross examination.

THE EXAMINER: It seems to me that Mr. Wayman being in Court and being a witness for the Government, the Government can question him.

Mr. GROSVENOR: I want the cross examination to continue now.

Mr. NOBLE: I call attention to counsel for Government that in Chicago he concluded the examination of Mr. Wayman.

Mr. GROSVENOR: I want to ask Mr. Wayman why he was not here yesterday and certain questions as to why he was at all the hearings to show that he was helping counsel for the Defendant and to show the counsel for the Defendants are in a position to go on with the cross examination. I have no more questions to ask bearing on the violation of the Sherman Act or to show that the Defendants have combined for the purpose of restraining trade, but I want to examine him on this matter alone.

THE EXAMINER: There is no objection made by counsel for the Defendant.

Mr. NOBLE: I do, however, note exceptions to all the rulings the Examiner made on my motion.

EDWIN L. WAYMAN, a witness heretofore produced and sworn, recalled by the Petitioner for further direct examination, testified as follows: 1

DIRECT EXAMINATION BY Mr. GROSVENOR (continued):

Q. Mr. Wayman, you have already been sworn?

A. Yes.

Q. You are a defendant in this case? A. Yes, sir.

Q. You were called as a witness for the Government at the hearings in Pittsburgh? A. Yes, sir.

Q. You were the first witness for the Government?

A. Yes, sir. 2

Q. You were on the stand for three days in Pittsburgh?

A. About three and one-half, I think.

Q. The hearing there lasted four days? A. Yes, sir.

Q. And you were on the stand three and a half days?

A. Yes, sir.

Q. After the conclusion of your testimony, several other witnesses were called, were they not? A. Yes.

Q. You remained in Court during the examination of those witnesses? A. Yes.

Q. You were suggesting questions to your counsel, that is the counsel for the Defendant, from time to time during 3 the examination of those witnesses? A. Some.

Q. That night the hearing was adjourned to Chicago on the next day? A. Yes, sir.

Q. And that night you went to Chicago with counsel for the Defendant? A. Yes, sir.

Q. There was no suggestion that you were present at Chicago on the part of the Government, was there? A. No.

Q. The hearing in Chicago lasted one day, during which a number of witnesses were examined by the Government?

A. Yes.

Q. You were present at those hearings? A. Yes. 4

Q. You suggested questions from time to time to counsel for the Defendant, that is questions which he should ask the witnesses? A. Yes.

Q. You were present at both of the Chicago sessions, that is the morning and afternoon hearing? A. Yes.

Q. And now, the next hearing after the Chicago hearing was in New York; is that right? A. Yes.

Q. That lasted one day? A. I think.

1 Q. You were not called as a witness for the Government then, were you? A. No.

Q. But you attended that hearing? A. Part of it.

Mr. NOBLE: It was thought that the cross examination of Mr. Wayman would go on at that time and counsel will recall that he had a number of witnesses to examine and suggested that the cross examination of Mr. Wayman not go on at that time.

Mr. GROSVENOR: I cannot say that I recall that.

Q. At any rate, Mr. Wayman, you were present on that
2 day? A. Yes, sir.

Q. And you left—

A. (Interrupting): In the afternoon.

Q. While you were here a number of witnesses for the Government were being examined? A. Yes.

Q. And during that examination by counsel for the Government you were conferring with and suggesting questions to counsel for Defendants and which they asked these witnesses on cross examination? A. Yes.

Q. There was another hearing in Chicago on December 13? A. Yes.

3 Q. You were present there? A. Yes.

Q. With the expectation of being cross examined on that day? A. I don't remember.

Q. Well, you were present? A. Yes, I was present.

Q. The witness, Mr. Kroos, was examined at that hearing? A. Yes.

Q. Mr. Kroos produced certain tables or figures?

A. Yes.

Q. You were present during that examination?

A. Yes.

Q. And during the cross examination of Mr. Kroos you
4 assisted Mr. Noble in suggesting to him questions which he should ask in conducting the examination? A. Yes.

Q. Mr. Kroos produced an exhibit consisting of tabulations as to prices, consisting of 37 pages and containing tabulations of prices which he said he had formed from the Resale Price List and the rules therein; do you remember that? A. Yes.

Q. And the cross examination by Mr. Noble was with reference to those tables? A. Yes.

Q. You had seen those tables before that time, had you not? A. One day. 1

Q. And you had other tables which had been drawn up to see if his tables were accurate?

A. No, I had inserted in his tables lead pencil marks showing the correct figures; his were not correct.

Q. Then you had been over those tables?

A. Some of them; I did not have time to go over all of them.

Mr. NOBLE: Won't you bring out the fact that you had requested counsel for the Defendant to have Mr. Wayman in Chicago and that you then put him on the stand there and asked him certain questions? 2

Q. Yes, I did ask him certain questions, didn't I?

A. Yes, sir.

Q. And we adjourned to New York on Tuesday?

A. Yes, sir.

Q. I asked you if it was as agreeable to you as Pittsburgh and you said it was all right? A. Yes.

Q. You were present in Chicago on the 13th during the whole hearing? A. Yes.

Q. And you went from Chicago to New York that night with your counsel? A. No. 3

Q. You went as far as Pittsburgh?

A. Yes, we were on that train and I got off at Pittsburgh.

Q. When did you come to New York?

A. Friday of last week.

Q. Then you were here Friday, Saturday and Sunday?

A. Yes, sir.

Q. And you saw counsel? A. Yes.

Q. When did you leave? A. Sunday night.

Q. You left for Pittsburgh Sunday night? A. Yes. 4

Q. Messrs. Noble, Jackson & Hubbard have been your attorneys throughout this period during which the License Agreement was discussed?

Mr. NOBLE: Objected to as being indefinite and not clear. Furthermore, I do not think he need tell who his advisers are.

Mr. GROSVENOR: I want to show that Noble, Jackson & Hubbard are qualified and prepared to go on

1 with this cross examination today and that they can do so.

Mr. NOBLE: I stated yesterday on the record that I have had exclusive charge of this examination and nobody knows anything else about it—that is, not exactly nothing about it, but very little.

Q. When did you retain Messrs. Noble, Jackson & Hubbard in respect to this licensing arrangement?

A. About the middle of March.

Q. That was prior to the meeting at the Hotel Astor on March 29 and 30?

2 Mr. NOBLE: I object to that unless you ask him if it was at a meeting which Mr. Wayman requested the gentlemen to meet him at.

A. I went to them along about the middle of March, to consult them about some paragraphs in my License Agreement.

Q. Then, from about the middle of March you were conferring with these various defendants at times, until May 6th, when they met you to sign the License Agreement?

A. Some, yes.

3 Q. During that time were you consulting with Noble, Jackson & Hubbard? A. Yes.

Q. With what member of that firm?

A. Mr. Jackson, and Mr. Noble took up the case from that time.

Q. Mr. Jackson was your counsel during the period of negotiations? He was your counsel until you had put into effect this License Agreement on May 6th, is that right?

A. Yes.

Mr. NOBLE: The witness testified that he consulted
4 various lawyers in respect to that.

Mr. GROSVENOR: I want to show that the counsel for Defendant is prepared and can go on with this cross examination.

Q. Now, the Bill in Equity was filed in July. At that time, Noble, Jackson & Hubbard were your counsel, were they not? A. Yes, sir.

Q. They have been your counsel throughout this litigation? A. Yes, sir.

Q. Has any other defendant been present at all of these hearings? 1

THE WITNESS: At all of these hearings?
Mr. GROSVENOR: Yes.

A. No, I think not.
Q. But you were present at all except yesterday?
A. Yes.
Q. Why were you not here at the meeting yesterday?
A. I left New York under the impression that the meeting was to be postponed.
Q. That was Sunday? 2
A. Yes, sir; and I was thoroughly under the impression that the meeting would be postponed; if I had known it was to be held, I would have remained in New York.
Q. You were asked at the Chicago meeting to produce certain papers; did you bring those with you? A. Yes.

Mr. GROSVENOR: I am through with the witness Wayman and I now offer him for cross examination by counsel for the Defendant.

Mr. NOBLE: Counsel for Defendant again says that he is unable to proceed with the cross examination of Mr. Wayman and requests the adjournment asked for, having stated the reason previously. 3

Mr. GROSVENOR: If counsel will not cross examine Mr. Wayman, I will ask for an adjournment until to-morrow, as I expect one more witness, and then I will again ask Mr. Noble to go on with the cross examination of Mr. Wayman and then I shall close my case tomorrow for the Government.

Mr. NOBLE: I do not know whether there is any use for me to suggest it, but the notice of the taking of the testimony of another witness to-morrow is rather short. The Examiner said that no matter what position the Defendant was in, the Government has the right to go on at any time, and so I make no suggestion at all. But, if I may, I suggest that it is a rather short time. 4

THE EXAMINER: I suggest that it is a short time; he has not been subpœnaed, I don't think.

Mr. REED: Counsel for Defendant, the Cahill Iron Works, John J. Mahoney and Frank Caldwell, un-

derstands that he will be allowed to cross examine the witness Wayman later on.

Mr. GROSVENOR: I am going to close the case tomorrow with respect to all the defendants.

Mr. REED: That is, counsel understands that he will be given an opportunity to cross examine the witness in accordance with the statement made on the record yesterday, but does not insist that this opportunity be given at all times, or prior to the closing of the Government's case. If necessary, we will recall the witness for the purposes of such cross examination, it being of like effect and so had at this time.

Mr. GROSVENOR: But this is not an agreement with counsel for the Government. Counsel for Government has proven his case and is going to stop his case tomorrow as to all the defendants. Tomorrow will be the fourth day that we have been ready for this cross examination.

Mr. NOBLE: I object to the statement as counsel for Government. Will the Examiner please rule upon the requests which I have made. I renew my protests against the Examiner requiring the cross examination of Mr. Wayman to proceed today, and I ask him if he does require the cross examination to proceed.

THE EXAMINER: The hearing having been adjourned from the 14th of December in Chicago to this place yesterday, for the purpose, as stated in the record, of cross examining Mr. Wayman, I suppose that might be considered the effect of my overruling of the motion of counsel for Defendant for an adjournment.

Mr. NOBLE: Then, I understand that you rule the counsel for Defendants be required to proceed with the cross examination of Mr. Wayman at this time?

THE EXAMINER: I have not so ruled, but I say that might be considered the effect of what I have ruled. I would be disposed to simply overrule the motion for adjournment.

Mr. GROSVENOR: You cannot force him to cross examine the witness, if he does not want to?

THE EXAMINER: I cannot see how I can make Mr. Noble cross examine Mr. Wayman if he does not want to. 1

Mr. NOBLE: I respectfully protest against the action of the Examiner and I state that I waive the cross examination of Mr. Wayman at this time, subject to whatever consideration I am entitled to at law. Now, as to whether we will adjourn until tomorrow to take the testimony of another witness, is your Honor ready to rule on that?

Mr. GROSVENOR: I cannot see why we should not. I see no reason why we cannot meet tomorrow for the examination of another witness. I want to put this witness on tomorrow and close my case and then ask that we adjourn until some particular time when the Defendants will begin their case. If we cannot have that meeting tomorrow, I shall close my case today and ask that we agree upon a time to meet and ask the Defendants to begin their case. 2

THE EXAMINER: It will be entirely convenient to me to adjourn until tomorrow, but I feel that I should consult the convenience of counsel for the Defendants on that point. 3

Mr. GROSVENOR: You mean whether they can be here or not?

Mr. NOBLE: Upon request of counsel for the Government to counsel for the Defendants, to try to make it personally convenient to counsel for Government to be here tomorrow counsel for Defendants agree to do so.

Mr. GROSVENOR: Mr. Wayman may go, if I understand that if he was here tomorrow, your attitude would be the same?

Mr. NOBLE: Yes, except for the examination of one witness which you have to close your case. 4

Mr. GROSVENOR: Yes; and if he does not show up tomorrow, I will close it anyway.

At this point the hearing was adjourned until the following day at 2:30 o'clock p. m.

1 IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY, *et. al.*,
2 Defendants.

Post Office Building,
New York, N. Y., December 22, 1910.

Pursuant to adjournment, the taking of evidence for the Petitioner was resumed in the Post Office Building, New York, N. Y., on the twenty-second day of December, 1910, at 10:30 o'clock a. m.

COUNSEL PRESENT:

3 EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General, for the Petitioner.
HERBERT NOBLE, Esq., on behalf of the Defendants.
ROBERT R. REED, Esq., on behalf of the Cahill Iron Works and Frank H. Caldwell and John H. Mahoney.

FRANK COLLINS, a witness of competent age, produced on behalf of the Petitioner, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GROSVENOR:

4 Q. Mr. Collins, what is your business?

A. I am Vice-President of the National Supply Company of Toledo, Ohio.

Q. What is the business of that Company?

A. Largely dealing in oil wells supplies and manufacturing some, and partly dealing in plumbing supplies and manufacturing part of them.

Q. In dealing in plumbing supplies, do you handle bathtubs and lavatories and sinks, that is sanitary enameled iron ware? A. We do.

Q. As Vice-President of the Company, are you in active management of that end of the business? A. I am. 1

Q. You are a jobber of such supplies? A. We are.

Q. Are your customers located in other states besides the State of Ohio? A. They are.

Q. That is, your customers who buy sanitary enameled iron ware?

A. Yes, sir; in Ohio, Indiana and Michigan, largely; there are some scattered orders we have from other states.

Q. Do you ship to these customers from Toledo, Ohio?

A. Some from Toledo, and some direct from the manufacturers. 2

Q. In other words, you send the order to the manufacturer and he sends the bill to you? A. Sometimes.

Q. And largely you ship from your storehouse in Toledo? A. Yes, sir.

Q. Previous to June 1, 1910, with what manufacturers of sanitary enameled iron ware did you do business?

A. Largely with the United States Sanitary Manufacturing Company.

Q. Located where?

A. With offices in Pittsburgh, factories in Monaca, Pennsylvania; some business with the Standard Sanitary Manufacturing Company, Pittsburgh, Pennsylvania; some with the Humphryes Manufacturing Company, of Mansfield, Ohio; some with the National Sanitary Manufacturing Company of Salem, Ohio; possibly a little with other manufacturers. 3

Q. You have been subpœnaed here as a witness?

A. I have, else I would not be here.

Q. You have produced certain letters and correspondence. I show you a series of letters with contracts attached and ask you if those were received by your Company from the manufacturers whose names appear thereon? 4

A. Yes.

Mr. GROSVENOR: I will offer this batch in evidence as "Petitioner's Exhibit No. 260."

Papers referred to were then marked and filed as "Petitioner's Exhibit No. 260."

Mr. GROSVENOR: This exhibit consists of various letters, from the following companies, each letter having a contract attached, the contract being a Job-

1 ber's License Agreement similar to Petitioner's Exhibit No. 11; each letter also contains the following sentence: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware." The letters are from the following companies: The Wheeling Enameled-Iron Company, dated June 6th; The Barnes Manufacturing Company, dated June 4; Cahill Iron Works, June 1; Humphryes Manufacturing Company, June 4; McCrum-Howell Company, May 31; McVay & Walker, June 4; National Sanitary Manufacturing Company,
2 June 6; Standard Sanitary Manufacturing Company, June 4; United States Sanitary Manufacturing Company, May 31, and the Union Sanitary Manufacturing Company, June 6.

Q. Did your company sign any of those contracts?

A. No, sir.

Q. Were you present at any meeting of jobbers and manufacturers of sanitary enameled iron ware in Toledo, in June? A. I was.

Q. What was that a meeting of?

A. A joint meeting of the Eastern Supply Association
3 and the Central Supply Association.

Q. You were President of the Central Supply Association at that time, were you? A. I was.

Q. After the meetings of those associations were concluded, was there any meeting or conference at which the License Agreement or Arrangement, which the several manufacturers had sent out, were discussed?

A. There was.

Q. This was when, in June? Do you remember, approximately?

A. Either the 12th or 13th, I believe.

4 Q. Who was present at that meeting? State the manufacturers present?

A. About 250 people, representing manufacturers in our line of industry.

Q. What manufacturers were present?

THE WITNESS: Manufacturers of—

Mr. GROSVENOR: Manufacturing sanitary enameled iron ware?

A. Well, Mr. Myler and Mr. Torrance and Mr. Ahrens of the Standard Company; Mr. John Wolff, of the L. Wolff Manufacturing Company; Mr. Walter Kohler, of the J. M. Kohler Sons Company; I remember distinctly that those gentlemen were there, and there were five or six others; I think Mr. Brigham was there, representing the Union people of Noblesville. I cannot remember definitely. Also Mr. Cline, I know he was there, of the United States Sanitary Manufacturing Company. 1

Q. Those are all that you recall now?

A. Yes; but I suppose there were quite a number of others. 2

Q. Were speeches made for and against this License Agreement?

Mr. NOBLE: I object to that question. It is immaterial whether speeches were made for or against.

Mr. GROSVENOR: The object of the question is to show, as it stands on the record that some jobbers had signed and some had not signed, that at the time of this meeting the matter was being discussed by the jobbers, and it is the purpose of counsel for the Government in asking the question to show that certain of the Defendants were present and urged the jobbers who had not signed to sign. 3

Mr. NOBLE: I still object on the ground that it is not material. There is no question here what any of these defendants did. The jobbers may have made speeches.

Mr. GROSVENOR: Will you read the question?

The stenographer then read the question.

Mr. NOBLE: I object to the question further unless it is limited to the defendants in this action. It is immaterial on the ground of conspiracy.

Mr. GROSVENOR: Before answering that question, will you look at the list of individual defendants given on page 4, of the Petition and state whether or not any of the individuals there named spoke at that meeting respecting the Jobber's License Agreement or the License arrangement? 4

Mr. NOBLE: What was that question?

The stenographer then read the statement of counsel and question referred to.

1 A. John Wolff of the L. Wolff Manufacturing Company was there and spoke; Mr. Ahrens, ditto; Francis J. Torrance, ditto; A. H. Cline, Jr., of the United States Sanitary Manufacturing Company, ditto. I remember that Kohler was there, but his name is not on this list. He also spoke.

Q. What did Wolff say? State to the best of your recollection?

Mr. NOBLE: I object to the question as it applies to nobody but Mr. Wolff. It is immaterial what he may have said.

2 A. Concisely, that the jobbers had been complaining about the poor state of business generally and particularly the inadequate profits accruing from the handling of enameled iron ware and that the manufacturers through this scheme were now providing a perfectly legal means whereby they could gain a reasonable profit, and he could not understand why there should be any objection on the part of any jobber to joining by executing the contract. Now, I want to qualify that by saying that that may not be the exact language, but that was the gist of quite a long speech made by Mr. Wolff.

3 Q. Did any jobbers reply to that speech?

A. I know I did.

Q. What did you say?

Mr. NOBLE: I object to what Mr. Collins may have said. It is not in any way binding on these Defendants and it has no connection with them. He was not in any conference with them and has no connection with them. He was not in any conference with them and did not speak at their request or with their authority. It is immaterial what he may have said.

Mr. GROSVENOR: Answer the question.

4 A. Approximately, I told them that in my opinion the entire proposition was illegal. They based their claim for legality on the fact that they had had the advise of a bunch of attorneys whom, in their opinion, they considered the most qualified to give an opinion on this subject in the United States; that the said attorneys had many other schemes of this kind now in operation and that they were found to be legal or at least had not been attacked by the Government. In response to that argument—

Mr. GROSVENOR: Excuse me for interrupting you, but will you read that answer so far, Mr. Stenographer? 1

The stenographer then read the answer.

Q. You say "They based their claim"; what do you mean by that?

A. Well, all who spoke, Mr. Torrance or Mr. Ahrens, or anybody who spoke; they all made that statement to me.

Q. Now, go on; what did you say?

A. I told them in my opinion they should not accept any small firm's advice on a subject of so much import, that we had had a similar case in Toledo, and our ice men went to jail on the advice of their attorneys, and our brick and lumber men were all heavily fined, and that I had made up my mind, expert counsel to the contrary notwithstanding, that if they went into this thing, they would all wind up in jail and that I would not have anything to do with it and strongly urged them not to go into it. 2

Q. Did Mr. Kohler take part in the discussion?

A. Yes, sir; I was Chairman of the meeting and I sent for him to have him speak.

Q. What did he say?

Mr. NOBLE: I object to that for the same reason as stated in my objections to the other remarks of Mr. Collins. 3

A. He stated that as far as the J. M. Kohler Sons Company were concerned, they could manufacture the sanitary enameled ware by the process that they had been using which did not contemplate the use of any devices covered by certain patents which, in his opinion, were being used to work out this scheme, and he strongly advised any jobbers against signing the agreement.

Q. Did any of these manufacturers whom you have named speak in reply to Mr. Kohler? 4

A. I think they all took a crack at Mr. Kohler.

Q. Is that all you have to say about that meeting?

A. I can answer any further questions which you may ask.

Q. What did Mr. Torrance say, if anything, about the License Agreement?

A. In substance what Mr. Wolff had said preceding him.

1 Q. Did Mr. Ahrens speak?

A. Yes, sir.

Q. What did he say?

A. Practically the same thing.

Q. And Mr. Cline?

A. I don't recall whether Mr. Cline spoke or not at that meeting.

Q. This meeting was after the License Agreements went into effect?

A. Yes, sir; subsequent to June 6th, you mean?

Mr. GROSVENOR: Yes.

2 THE WITNESS: Yes, sir; it was the 12th or 13th.

Q. Did you personally see any of these manufacturers in regard to the signing of these Agreements at this time in Toledo?

A. I think they all, collectively and individually, saw me.

Q. And asked you to sign the License Agreement?

A. Yes, sir.

Q. Mention the names of those?

A. Mr. Torrance, Mr. Ahrens, Mr. Cline, Mr. Brigham and any others who may have been there, I think.

3 Q. Now, other than the list of manufacturers appearing in the Government's Petition at pages 5 and 6 who are Defendants in this case, what manufacturers of sanitary enameled iron ware are there in the business?

THE WITNESS: Identify them here or answer from memory?

Mr. GROSVENOR: Any way.

A. The Iron City Works; J. M. Kohler Sons Company; Blairsville Enameled Ware Company—your question is who are the other manufacturers than those who asked us

4 to sign?

Q. No, my question is: What manufacturers of sanitary enameled iron ware are there other than the names appearing in the list of Defendants?

A. Louis Lipp of Cincinnati, and there are others, but I don't know them.

Q. You mean there are others named in this Petition on page 10?

A. Yes, but I could not identify them, because I never

did any business or had any acquaintance with Clymer or the other ones. 1

Q. Did you have any conversations with Mr. Torrance subsequent to this Toledo meeting in reference to signing the License Agreement?

A. Yes.

Q. Where was that?

A. I had one conversation with him at Toledo before he left, subsequent to the meeting on the 12th or 13th of June I had another conversation with him—I had three or four with him in Pittsburgh.

Q. In reference to your getting sanitary enameled iron ware? 2

A. Yes, sir.

Q. Did he ask you to sign this agreement?

A. Yes.

Q. And you refused?

A. Yes.

Q. Were you able to get goods from the Kohler Company?

A. No.

Q. Why not?

A. Because Kohler told me he had all the trade he could possibly take care of and was not able to take on an account as large as ours. 3

Q. Weren't you able to get goods from the Iron City Company?

A. No, sir; for the same reason that Kohler gave.

Q. Did you finally get goods from the Standard Sanitary Manufacturing Company?

A. Yes, sir.

Q. State the arrangement? Was it by contract?

A. No, sir.

Q. Was it by oral arrangements?

A. Yes, sir. 4

Q. State what that was?

A. Mr. Torrance in the first place told me at Toledo on my first visit to Pittsburgh that he would make some arrangement whereby we could get our goods. Just how he would fix it he could not say at that time. Later it was arranged—

Mr. NOBLE: I object to the language "it was arranged." It is stating conclusions here not binding

in any way, shape or form, on these Defendants. Just state what was said. I am sure, Mr. Collins, that if you were on the other side you would not want to be bound in such a way.

THE WITNESS: I do not want to do an injustice. Will some one advise me how to answer?

Mr. GROSVENOR: State what he did, or state what he said later, but don't use the word "arranged."

A. Later the goods were shipped to us and charged through their Cleveland branch house.

Q. Without your signing any contract?

A. Without our signing any contract.

Q. What price did you pay?

A. We paid the resale, and 5 or 7½ per cent., whichever it may be; in other words, they billed us the goods in accordance with the prices stipulated in the contract which they had asked us to sign, which was never executed.

Q. I show you a carbon copy of a letter, evidently addressed by you and dated June 28, 1910, to F. J. Torrance, Standard Sanitary Manufacturing Company; will you state if you recall sending such a letter?

A. Yes, sir.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 261."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 261."

Q. Will you look at those letters and identify those (indicating)?

A. Yes, I identify these letters.

Mr. GROSVENOR: This is signed by Francis J. Torrance and is dated July 5, 1910, and this one is addressed to F. J. Torrance and is dated July 1, 1910, it being a letter from the National Supply Company, to which the letter of July 10, was a reply. I offer these letters as "Petitioner's Exhibits Nos. 262 and 263."

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 262 and 263" respectively

Mr. GROSVENOR: The letter of June 28, which has been filed as "Petitioner's Exhibit No. 261," reads as follows:

"June 28/1910. 1

"F. J. Torrance, Vice-Pres.,
Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"Dear Sir:—

"I enclose herewith copy of letter I received yesterday from J. M. Kohler and found on investigation that all of the Jobbers in the City received a like letter.

"This does not look as though you were correctly advised when you told me in confidence on the telephone Saturday that you expected to attend a meeting Monday in Philadelphia and at that meeting both Kohler and Iron City would be reconciled to the new proposition. 2

"This letter was written Saturday as you will note, hence your informant must have been in error.

"I only give you this to show you what we are up against.

"The agent for Kohler is perfectly satisfied to go on selling goods at his price and you will readily realize I cannot do very much if I use the new book.

"We put the new book into force however and are making an effort along that line. 3

"I wired your office today asking whether you would be in Pittsburg tomorrow. If I receive an affirmative response, I shall probably run down to night and go over the details further with you. If not tomorrow, then the day following.

"Yours truly,

"Second Vice-President.

"Dict. F.G.
"Enc." 4

"N.B.—Have just received your response stating Mr. Torrance will be in Pittsburg Thursday. I will therefore be in your City Thursday morning, and will call your office between nine and ten o'clock and arrange for a meeting."

Q. Do you recall having such a conversation with Mr. Torrance over the telephone?

A. Yes, sir.

Q. He was in Pittsburgh?

A. Yes, sir.

Q. Did he state that he was going to Philadelphia?

A. Yes, sir.

Q. Did he state why the Iron City was going to be reconciled?

Objected to.

Q. Is this paragraph which I will read, an accurate summary of the conversation that you had with Mr. Torrance over the telephone (reading): "This does not look as though you were correctly advised when you told me in confidence on the telephone Saturday that you expected to attend a meeting in Philadelphia on Monday and at that meeting both Kohler and Iron City would be reconciled to the new proposition"?

A. If it were not, I would not have written it.

Q. It is then?

A. It is.

Mr. GROSVENOR: The letters filed as "Petitioner's Exhibits Nos. 262 and 263" read as follows:

"July 1/1910.

"F. J. Torrance,
Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"My dear Frank:—

"Enclosed I hand you our orders #20347, 20348, 20349, 20350, 20351, 20352, 20353, 20354, 20355, 20356, 20357, 20358, 20359, 20360, 20361, 20362, 20363, 20364.

"These are all orders covering goods for which we are compromised; as I explained to you this morning most of them are scattering orders which we have had for some time.

"The large order #20354 is for ware that we will have to deliver as the jobs are ready and for which we quoted prices and are consequently obliged to take care of our customers on same.

"My understanding is that you are to ship all of these orders Tuesday.

"Those coming to Toledo will of course come for-

ward in one car and those going direct to the cus- 1
tomer will of course be shipped by you direct in accordance with the instructions on the face of the order.

"A number of these orders were direct shipments but I thought it would be less expensive for you and barring the handling of the godds, equally as cheap for us to have them come to Toledo, hence with one exception, viz.: #20361, we have changed them to Toledo delivery.

"We have been handling heretofore all of our lavatories with integral soap cup and we prefer those 2
that you ship to be so equipped, instead of your N. P. soap dish.

"Yours truly,

"Dict. F. C. Second Vice-President.
"enc."

"N. B.—As I explained to you this morning, our old price was the supposed carload limit selling price and a confidential 7½%."

"Pittsburg, U. S. A., July 5, 1910. 3

"Mr. Frank Collins,
National Supply Co.,
Toledo, Ohio.

"Dear Sir:—

"Referring to your communication covering orders 20347, etc., would say that as advised you recently, we cannot entertain any orders from jobbing houses who have not become parties to the resale agreement, which has been placed in force for the benfit of the jobber.

"You can, however, purchase the goods through 4
some other jobbing house who has already signed. There are a number of these Houses at Cleveland but none at Toledo. To the best of our knowledge, all the Cleveland Houses have signed the agreement and we would be glad to have this business through the Standard Manufacturing Company of Cleveland. We have presumed to take a memorandum of these orders on the supposition that it will be agreeable

1 to you to buy from there and we have done this to facilitate matters as we understand from your conversation that time is of the essence of the matter to you.

"Yours very truly,

"FJT Francis J. Torrance."

Q. Was Mr. Wayman at any of these meetings at which you and Mr. Torrance discussed whether the Standard should sell you goods? A. Yes, sir.

Q. Did Mr. Torrance suggest that you should see Mr. Wayman about the matter? A. Yes.

2 Q. What did he say?

A. He wanted me to see Mr. Wayman; he thought Mr. Wayman could convince me of the error of my ways, I presume.

Q. What did you do? A. I refused to meet Wayman.

Q. Your dealings were with whom, then?

A. Torrance and Ahrens and one meeting with Mr. Cline; at one of these meetings Mr. Wayman was brought in.

Q. I show you a letter dated September 24, 1910, on the letterhead of Edwin L. Wayman, marked "Personal", and signed "Theo. Ahrens, Presdt.", and ask you if you recall

3 receiving that letter? A. Yes, sir.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 264."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 264."

Q. Before June 1, with which of the two companies had you done the most business, the Standard Sanitary or the United States Sanitary Manufacturing Company?

A. The United States Sanitary Company.

Q. Had Mr. Cline of that Company asked you to sign a

4 contract? A. Yes, sir.

Q. Where was that?

A. At Toledo, the first time, I guess.

Q. And did you refuse?

A. Yes, sir; and later at Pittsburgh.

Q. And did they subsequently refuse to sell you goods unless you would sign? A. Yes.

Q. Since June 1, from which Company have you bought most goods, the Standard or the United States?

A. I think from the Standard Sanitary Manufacturing Company; it has been my aim to do so, at least. 1

Mr. GROSVENOR: Petitioner's Exhibit No. 264 reads as follows: "I promised to write you regarding the difference that exists between us on the charge for drilling special holes in sinks."

Q. What was the difference?

A. The manufacturers adopted as a standard—

Mr. NOBLE: I object to that. State what the difference was.

Mr. GROSVENOR: The witness is coming to that. 2

Mr. NOBLE: The witness is a very intelligent man and can answer that very easily.

Mr. GROSVENOR: What was the question?

The question was then read by the stenographer.

A. I am very much obliged for the compliment, but I cannot answer the question in any other way: The manufacturers had adopted the 8 inch as a standard center to center; that could not be used successfully in Toledo, because in a great many cases we have to put three faucets into the sinks, two for hot and cold soft water and one for public service water— 3

Mr. NOBLE: What has that to do with this case?

Mr. GROSVENOR: I will tell you: Exhibit No. 133 is a price list of Edwin L. Wayman and contains a lot of charges for special drillings, being page 17 of the white pages; these pages apply to all the manufacturers who are licensed with Wayman. That is this book gives not only the price but these special charges.

Mr. NOBLE: Is this testimony being given by counsel? 4

Mr. GROSVENOR: No, I am trying to explain this to you. The statement of the witness will be as to the charges on those special drillings. It is only the carrying out of that one phase of the License Agreement.

THE WITNESS: Will you read my last remark?

The stenographer then read the answer to the question.

1 THE WITNESS (continuing): Now, this cannot be done with the outside faucet less than 10 inches center to center.

BY MR. GROSVENOR:

Q. What is the standard distance?

A. I stated that, 8 inches. I therefore requested them to cast the hole in our sinks where two were cast 10 inches center and where three were cast 5 inches. It was admitted to me by Mr. Torrance and Mr. Ahrens that there would be no extra expense in making them so.

2 MR. NOBLE: I move that the answer be stricken out, especially the latter part as being wholly immaterial.

THE WITNESS: Well, you wanted to know, and that is it.

BY MR. GROSVENOR:

Q. The letter goes on as follows (reading): "I had this matter up with the Commission at a meeting held this week and we went into it at great length. I am now convinced that the charge we make is correct, and that you
3 should pay it, and I want to explain to you the reason why I think so.

The special drilling which the Toledo Trade requires means that all orders for sinks, backs or integral sinks which we receive from you must be put through the works on a special order and must be made separately from the rest. In other words, it is not a regular product, but becomes a special order requiring special attention and extra cost. Any defective or imperfect ware which we might make entails an additional loss as it cannot be used at all but must be "scrapped". Please explain this to the Job-
4 bers in your city, and tell them that there is not intention on our part to be arbitrary or charge them more than what is fair or proper.

While writing on this subject I wish to call your attention to the fact, that when the Agreement was made with you regarding the purchase of Licensed Ware, it was understood that you would confine your business to the Companies that are now licensed. Some business should go to these Companies in order to carry out the arrangement in general. Will you kindly advise Mr. Wayman direct just

what you propose to do in the matter? The U. S. Sanitary Mfg. Co., in particular who were to get part of your business, have received only a few small orders; you should give them some carload specifications, as this was the understanding when the matter was talked over with you. 1

Yours truly,

Theo. Ahrens, Presdt",

Then there is a foot note in handwriting as follows: "You can readily understand that we don't want you to buy elsewhere, unless as in this instance there is a good reason for it. It would not be good policy to cut out U. S. altogether, better give them some and keep them from kicking". 2 Did Mr. Torrance ask you to confine your purchases to the Standard at the time he agreed to let you have goods without signing the contract?

A. No, I offered him that as an inducement.

Q. I show you another letter dated October 6, and signed by Theodore Ahrens and ask you if you received that letter? A. Yes, sir.

Mr. GROSVENOR: I offer the letter of October 6 in evidence as "Petitioner's Exhibit No. 265."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 265." 3

Q. And the letter signed by F. J. Torrance and dated 9-29-10, and ask you if you remember receiving that letter? A. Yes, sir.

Mr. GROSVENOR: I offer that letter as "Petitioner's Exhibit No. 266." I do not however, offer the letter which appears on the back of Exhibit No. 266.

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 265 and 266" respectively.

Mr. GROSVENOR: These exhibits read as follows: 4

"Pittsburg, Pa., Oct. 6, 1910.

"Mr. Frank Collins,
The National Supply Co.,
Toledo, Ohio.

"My dear Collins:

"I have just returned to Pittsburgh this morning, after spending a week in New York and Chicago. I am sorry that I did not have an opportunity to see

you here and will be glad to meet you either Friday or Saturday of this week if you can find it convenient to come to Pittsburgh. I do not believe, however, that the little difference between us as to charge on drilling holes on sink backs is important enough to warrant your coming here.

"We went into this quite thoroughly with the Commission and all of them agreed that the charge was proper and should stand. I hope you can see it in the same light.

"With best wishes, I am,

"Sincerely yours,

"Theo. Ahrens,
President."

"TA

"Pittsburg, U. S. A. 9/29/10.

"National Supply Co.,
Toledo, Ohio.

"Gentlemen:—

"Referring to your letter of the 27th per M. Collins, I don't know how we could locate who is at fault in the matter of the sale to the Monroe Hardware Company unless we knew who the dealer was who sold it. I take it that the Monroe Hardware Company carry on a plumbing business and therefore that some manufacturer sold some dealer, who in turn sold the Monroe people.

"I would like to have this information promptly. I am leaving for New York tonight to attend a meeting of the resale commissioners and on my return will take the matter up with Mr. Wayman.

"I note your letter to Mr. Ahrens stating that you will be here about the 4th of the month. To the best of my knowledge, both of us will be here and glad to see you.

"Yours very truly,

"F. J. Torrance,
V. P."

"FJT

Q. I show you a letter signed by E. L. Wayman, and dated August 24, 1910, and ask you if you received that letter? A. I did not.

Q. Did your Company?

A. I take it that we did, because I took it from my file. I was absent from Toledo from the 20th of August until the 12th or 13th of September. 1

Q. It is produced from your files, is it? A. Yes, sir.

Mr. GROSVENOR: I offer that letter as "Petitioner's Exhibit No. 267."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 267."

Mr. GROSVENOR: That letter reads as follows:

"Aug. 24, 1910.

"Mr. Frank Collins,
c/o National Supply Co.,
Toledo, Ohio. 2

"Dear Sir:—

"I am informed that your Company is selling Enameled Ware throughout Michigan at prices below those established on Licensed Ware. At your convenience will you be kind enough to let me hear from you regarding the matter so that I can reply to the party making the complaint.

"Yours very truly,

"E. L. Wayman." 3

Q. I show you a letter dated June 1, 1910, and signed "A. H. Cline, Jr." and addressed to your Company, and I ask you if that is a letter which was received by your Company? A. Yes, sir.

Mr. GROSVENOR: I offer that letter in evidence as "Petitioner's Exhibit No. 268."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 268."

Mr. GROSVENOR: This letter, Petitioner's Exhibit No. 268, reads as follows: 4

"Pittsburg, Pa., June 1, 1910.

"The National Supply Co.,
Toledo, Ohio.

"Gentlemen:—

"In reply to your favor of the 31st ult., by Mr. Frank Collins in reference to the price quoted by the Pittsburg Supply Co., to the Justice Plumbing Co., Massilon, Ohio, beg to state that the writer has just

taken this matter up with Mr. Lamberger, Manager of the Pittsburg Supply Co., and he states that they positively have not made Mr. Justice any quotation from their office in over two months. He also states that they are not doing any business with Mr. Justice, owing to a little misunderstanding that they have had with him. He does state, however, that their salesman was there recently but does not know of any quotation that their salesman made, as he had no authority to make a quotation of the prices as given in your letter. This could not have been the Pittsburg Gage & Supply Co. as these people do not handle enameled ironware, so that either your salesman has gotten the name of the firm wrong or else the quotation is wrong. However, this price cutting cannot keep up over the end of this week, as the new prices will go into effect on next Monday and this will take care of just such situations as this. Thanking you for taking the matter up with the writer, beg to remain,

"Yours very truly,
"United States Sanitary Mfg. Co.,
"A. H. Cline, Jr.,
"AHC-R. Secretary."

Mr. NOBLE: I object to that letter on the ground that it is immaterial, incompetent and irrelevant and has nothing to do with the allegations in this case.

Q. I show you two letters dated June 7 and June 13, both signed by A. H. Cline, Jr., and ask you if you received those letters? A. Yes, sir.

Mr. GROSVENOR: In reply to your objections, I want to state that is offered as being an admission on the part of the United States Sanitary Company that new prices were going into effect and that these prices and the new arrangement would prevent price cutting on these plumbing supplies to customers. I now offer these two letters which have just been identified as "Petitioner's Exhibits Nos. 269 and 270."

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 269 and 270" respectively.

Mr. GROSVENOR: Those letters read as follows:

"Pittsburg, Pa., June 7, 1910. 1

"The National Supply Company,
Toledo, Ohio.

"Gentlemen:—

"We have your orders #18444, #18363 and #18457 received in this mornings mail, but as we have not as yet received your signed license contract, and as our contract with Mr. E. L. Wayman the Licensor, positively prohibits our accepting any orders or executing same after the 6th day of June, except with the jobbers who have signed the license 2
contract, we are unable to execute these orders until we receive your signed contract. We are sorry to have to take this action but we have no alternative whatever in the matter as our contract positively states what we are allowed to do and explicitly prohibits our accepting any orders from jobbers who have not signed the license contract. So we would kindly ask you to let us have this signed contract as early as possible in order not to delay any of your shipments.

"Yours very truly, 3
"United States Sanitary Mfg. Co.,
"A. H. Cline, Jr.,
"AHC-R. Secretary."

"Pittsburg, Pa., June 13, 1910.

"Mr. Frank Collins,
c/o National Supply Co.,
Toledo, Ohio.

"Dear Sir:—

"We have your favor of the 11th in reference to orders that you are sending us, which you ask us to 4
execute before you sign your resale contract, and in reply as stated in our former letter, we have no alternative or discretion whatever in the matter, as we have positively signed up under the agreements with Mr. Wayman that we would not accept orders from any jobber who had not signed the resale contract.

"The writer will be very glad to see you in Toledo tomorrow and talk the matter over with you. In the

meantime, we positively must hold up all orders, that have come in since June 6th from you.

"Yours very truly,

"United States Sanitary Mfg. Co.,

"A. H. Cline, Jr.,

"AHC-R. Secretary."

Q. Did you get any of those goods from the United States Sanitary Manufacturing Company at this time?

A. I cannot state definitely; some orders were filled by switching the numbers to back orders and some were cancelled.

Q. This letter, Exhibit No. 270, refers to the date for this Toledo meeting about which you testified? A. Yes, sir.

Q. Will you identify this letter from the Cahill Iron Works, dated June 10, 1910, and addressed to your Company? A. Yes, sir; I identify it.

Mr. GROSVENOR: I offer that in evidence as "Petitioner's Exhibit No. 271."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 271."

Mr. GROSVENOR: I will read that letter (reading):

"Chattanooga, Tenn., U. S. A.,
June 10, 1910.

"The National Supply Co.,
Toledo, Ohio.

"Gentlemen:—

"We are in receipt of your valued order of the 8th, No. 18624, and beg to thank you for same. You were advised some time ago by E. L. Wayman, Licensor, that new prices would be effective June 6th, and as your order did not reach us until June 10th, we have no choice whatever in the matter, but will be compelled to invoice same at new prices. These prices have doubtless reached you by this time, and we trust that the above will be satisfactory.

"In order to get the benefit of discounts from the resale prices, it will be necessary for you to return the contract which we mailed you on the 4th, properly signed, and, if you have not already done so, we would ask that you sign same and return to us with your reply.

"Again thanking you for the order, and awaiting your reply, we are, yours truly, 1
"HWP/W The Cahill Iron Works."

Q. Will you identify this letter of July 7, addressed to you and signed by F. H. Caldwell, President, and this letter of July 9th, being a carbon copy of what appears to be a letter addressed by you to the Cahill Iron Works, dated July 9th, and Mr. Caldwell's reply to your letter, dated July 11? A. Yes, sir; I identify those.

Mr. GROSVENOR: I offer these letters in evidence as "Petitioner's Exhibits Nos. 272, 273 and 274." 2

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 272, 273 and 274," respectively.

Mr. GROSVENOR: Those letters read as follows:

"Chattanooga, Tenn., U. S. A.,
July 7, 1910.

"Mr. Frank Collins,
National Supply Co.,
Toledo, O.

"Dear Sir:— 3

"Yours to hand. Am sure you know me well enough to be sure I do not want to be arbitrary or unfair; also that I want all the business I can get.

"This resale license arrangement is not of our making, and we were the last manufacturer to go into it. Our position was simply this: We have a very satisfactory electric dredger, for which we have patents applied for. The owner of the Arrott Patent contends that if our claims are all allowed we will still infringe on their patent. They have been through the Courts three times, as high as the Circuit Court of Appeals, and have won every time. It was, therefore, up to us to take the license or give up our dredger, or stand a law suit. 4

"Kohler claims he can make the goods the old way; we know we cannot, and if we were to fight the suit and lose the results would be very disastrous to us. I went to New York and consulted the best legal talent I could find. My brother has been Practicing law in New York for twenty-five years, and Edison's

1 Chief Attorney, who, perhaps is one of the best patent attorneys in the country, is a warm personal friend of his. They went over the matter together and said that the U. S. Circuit Court of Appeals had pronounced similar cases legal, and until the Supreme Court decided differently it was surely the Law of the land.

"Not making tubs or a complete line, it surely was not up to us to fight it, and you can readily see our position. Having accepted a License there is nothing for us to do but to carry it out. Another
2 point I should mention. Cases of this kind, where patents are involved, do not come within the province of the State Courts, but must be tried in U. S. Courts.

"I am going to order the goods shipped as requested, as I have no desire to embarrass you in any manner whatever, but I will rely on your sense of fairness, etc., not to mention it, but to keep the matter confidential, as I am disobeying the instructions of the Licensor, and am subjecting myself to penalties if he felt disposed to impose them.

3 "I am free to confess that when the matter was first presented to me it looked very different from what it does now from a legal standpoint. I understand that three fourths or more of the jobbers have signed the agreement, and it does not seem to me that you would be assuming any risk, provided you want to sell the licensed ware.

"If you prefer not, you can readily understand, having signed the license, I must follow instructions, and I am sure you will not feel hard towards me when you get this explanation of our position. Of
4 course if you do not intend to sell licensed enamel ware it would be advisable to tell your men not to take orders for our goods.

"Trusting you will consider this letter strictly personal and confidential, I am,

"Yours truly,

"FHC-C Frank H. Caldwell, Prest."

"P. S. In regard to Arrott Patent, I understand the most of the manufacturers have been paying

royalties so much a furnace. We have had notice for sometime past that we would be held liable for infringement." 1

"July 9/1910

"Cahill Iron Works,
F. H. Caldwell, Pres.,
Chattanooga, Tenn.

"Gentlemen:—

"I beg to acknowledge your personal letter of the 7th and will treat same confidential as requested, and would ask that you kindly do likewise with reference to this communication. 2

"I want to outline to you our position in this matter, as I have tried to make it plain to various other people interested in this scheme—

"Now in the first place the National Supply Co. have 75 or 80 Branch Stores, the number varying from time to time, due to the activity in various parts of the country in the Oil Industry.

"We have a good many stores in such States as California, Texas, Oklahoma, Kansas, Illinois, and Indian Territory, in all of which Communities there has been more or less legislation of an adverse nature to large Companies enacted, due to the sentiment that prevails through the West in general. 3

"We are loathe to enter into any price agreement or any scheme of any kind that might be considered as being in restraint of trade, regardless of any opinion that might be given us by any attorney, that such scheme was legal due to the basis of it being that of a patent right.

I believe that this is exactly the position taken by Crane who like us has a great many branch stores.

Now we will be very glad to co-operate with those interested as far as possible provided such co-operation does not in any sense make us liable under existing Laws, but like Crane we will not sign this agreement. 4

"I am credibly informed and I believe you know that I am correct when I say that you have no contract with the Crane Co. other than a verbal understanding which you may have had, and further-

more they are permitted to buy from whom and at what price they choose.

"We probably are not quite as large factors in the plumbing line as they are, but we certainly pay our bills as promptly and are in our own opinion at least, entitled to the same consideration that they are.

"We think Crane's position is absolutely the correct one and we will go just as far as they do and no further.

"We do not believe for one moment that it is other than an injustice to us to ask us to concede anything that has not and will not be considered by Crane, and I would like an expression from you along these lines as to what your opinion is of our position, as outlined in the above.

"I beg to state that I have only the highest personal regard for your own good self and while this entire proposition may be all right, we do not want to be dragged into a scheme which in our opinion is at least questionable, if not illegal, as it might reflect seriously were we to be brought to task in some of the Western States, due to our large operations and consequent feeling that exists through the Middle West with reference to big concerns who do Interstate business.

"I should be very glad to hear from you further on this subject, and assuring you that anything we can do to better conditions, we will do provided same is legal, I beg to remain,

"Yours truly,

"Dict. F.C. Second Vice-President."

"Chattanooga, Tenn., U. S. A.
"July 11, 1910.

"Mr. Frank Collins,
National Supply Co.,
Toledo, O.

"Dear Sir:—

"Answering your favor of July 9th, would say that we are a very small factor in this arrangement, and in order to get any change in the agreement it is

necessary to take the matter up with Mr. Wayman, and let him work it out. 1

"Would state that I have always been on very friendly terms with you personally, and no matter what happens in business matters, I hope these relations will always continue. I have often gone over the question of inspection with you, and our people (particularly our General Manager, Mr. Mahoney) have always said that your business on this account was always unprofitable. There would actually be more rejections and returned goods in one car for you than in seven or eight cars, say, to Crane Company. This may seem incredible to you, but we keep a strict account of all returned goods, and can assure you that this is correct. So, you see we could not afford to take all your business if you would give it to us. 2

"I want to treat everyone right under any and all conditions, and it appeared to me that it was only fair to fill these orders already taken by you, but I trust you will instruct your men not to take orders for our goods until you can come to some understanding with Mr. Wayman, under whose instructions we are operating at this time. Should you make these satisfactory arrangements, and would care to handle any of our special goods we will try to please you, but your inspection, to our mind, is so severe that we do not care for the trade on the general line of goods in our line. 3

"Trusting this will find you in good health, and with best regards, I am,

"Yours truly,

"F. H. Caldwell,

"FHC-C President." 4

Mr. REED: Please note that it is agreed that counsel for the Cahill Iron Works shall have the right to enter any objections or exceptions to the testimony at some future time, after having had opportunity to read over the testimony.

Mr. GROSVENOR: I limit my consent to a reasonable time because this record is going to the printer very shortly, and I expect to have it put in type

within a few days, so counsel for the Defendants should enter their objections within a reasonable time from this date.

CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Collins, are these letters which counsel for the Government has been examining here from your file?

A. Yes, sir.

Q. Have you any objection to my seeing the letters from your files that passed between you and Mr. Wayman?

THE WITNESS: Me and Mr. Wayman?

Mr. NOBLE: Yes.

A. No, I have no objections. I do not think that I ever wrote Mr. Wayman a letter that I know of in my life. He has written some to me, however.

Q. Will you kindly let me have those letters?

A. Here they are (handing same to counsel).

Q. What was the date of your talk with Mr. Torrance at which he said he would try to arrange for you to purchase licensed sanitary enameled iron ware from the Standard Sanitary Manufacturing Company?

A. I cannot remember.

Q. Approximately?

A. Approximately between June 10, and July 1.

Q. Did he tell you with whom he would have to talk in order to make the arrangements? A. Yes.

Q. With whom did he say?

A. That he would have to fix it with Wayman.

Q. Have to get Mr. Wayman's consent?

A. That he would have to fix it with Wayman.

Q. In other words, make some arrangement whereby you could buy licensed sanitary enameled ware?

A. I presume that is what he meant, I don't know.

Q. What did you want to do, buy those goods?

A. Yes, sir.

Q. And did he afterwards sell you licensed sanitary enameled iron ware? A. Yes, sir.

Q. Was there any exchange of letters between you on the subject? A. There is considerable in the files.

Mr. GROSVENOR: Between whom was that correspondence?

THE WITNESS: Between Mr. Torrance and myself.

Q. Is there any of that correspondence which relates to the fact that Mr. Torrance or somebody in the Standard Sanitary Manufacturing Company had made an arrangement with Mr. Wayman or fixed it with Mr. Wayman in some way so that you could get licensed sanitary enameled ware? A. Not that I can recall. 1

Q. May I look at the file?

A. Here it is (indicating); I am sure there is nothing on the file.

Q. After you had had this conversation with Mr. Torrance in which he had said to you that he would try to fix it so that you could purchase Standard sanitary licensed ware, did you thereafter have any conversations with other licensed manufacturers? A. Mr. Cline and— 2

Q. And did you make a similar arrangement with him?

A. No.

Q. Did you ask Mr. Cline to try to sell you licensed sanitary enameled ware? A. I did.

Q. What did Mr. Cline say?

A. Not unless I signed this agreement.

Q. Did Mr. Cline say that he would try to get Mr. Wayman to effect this arrangement with you?

A. I did not want him to or ask him. 3

Q. Did you talk with any other manufacturers in respect to the matter? A. No.

Q. Did you have any correspondence with any other manufacturers with respect to the matter?

THE WITNESS: You mean as to licensed ware?

MR. NOBLE: Yes, licensed ware.

A. No, I think we had some orders with the Cahill Iron Works, which they refused to ship, and we may have had some correspondence with them.

Q. What was the date of your telephone talk with Mr. Wayman? 4

THE WITNESS: What talk?

MR. NOBLE: Wherein you agreed to buy licensed enameled ware and agreed to be bound.

A. I don't remember it.

Q. You do not mean to say that you did not have a talk with Mr. Wayman and agreed to maintain the conditions and provisions of the agreement?

1 A. I did not; Mr. Wayman pestered me to death, but he never got me to agree to it.

Q. You agreed over the telephone to do it, though, didn't you? A. I just said no.

Q. You say you did not? A. I did not.

Q. Did you have a telephone talk with Mr. Wayman?

A. He called me at least a dozen times.

Q. Did you have a telephone talk with him on that subject?

A. He may have asked me, but I do not recall it.

Q. Do you remember having a telephone talk with him
2 about the 5th of July? A. No, sir; I do not.

Q. You do not remember telling Mr. Torrance that you had that talk with Mr. Wayman and he had given you licensed—

A. (Interrupting): No, sir; and I will say that that never did occur.

Q. You have no recollection of telling anybody else that?

A. No.

Q. You did maintain the prices, however, didn't you?

A. Possibly; in some cases we charged more and in some cases less.

3 Q. You sold the goods that you got from the Standard Sanitary Manufacturing Company in accordance with price book? A. Sometimes; yes, sir.

Q. Didn't you tell Mr. Torrance that you would maintain those prices?

A. He asked me to and I said that no jobber could sell them for less money than indicated in the price book and that in a great many cases we would probably charge more, but I would not go on record to do so, and that he would have to take us on sufferance.

Q. You mean that you would not write the letter but
4 you told him orally that you would maintain the prices, didn't you? A. I told him what I just told you.

Q. Tell it to us again.

THE WITNESS: I suppose you think I cannot tell the truth twice alike?

Mr. NOBLE: No, Mr. Collins, you used the words, "Go on record"; that usually means on paper; I want to know what you said as well as you remember it.

A. I cannot remember the exact words I used sixty days hence. 1

Q. I want you to tell us to the best of your recollection what words you used?

THE WITNESS: Then, you want the substance.

Mr. NOBLE: No, I want your best recollection.

THE WITNESS: I can only give the substance and tell the truth.

Mr. NOBLE: Give your best recollection of your conversation with Mr. Torrance when you discussed getting licensed ware and selling it in accordance with the resale price list which is Exhibit No. 41? 2

A. I told Mr. Torrance that I did not see how it were possible for us or anyone else to sell the licensed ware at any less money than was outlined in his price book and that in all probability in a great many cases we would charge more; that I would not go on record, either verbally or otherwise, and agree to charge those prices and that he would have to take us on sufferance.

Q. That was after Mr. Torrance had tried to arrange it or fix it with Wayman so you could get licensed goods?

A. It was part of half a dozen conversations which took place. 3

Q. Now, how did you happen to write to Mr. Wayman? Here are some letters from the National Supply Company?

A. That occurred in my absence. If I had been there, there would have been no letters written to him.

Q. Why did your firm write to Mr. Wayman?

A. I don't know why they did.

Q. You do not think they had any relations with him?

A. None whatsoever; we were almost pushed to Mr. Wayman by the various manufacturers, who instead of answering our letters said those letters would be answered by Mr. Wayman, but we never wrote to Mr. Wayman, to my knowledge. 4

Q. I find in this file which you have allowed me to look at, a letter dated July 29, 1910, it being a letter addressed by the National Supply Company to Mr. Wayman; also a letter addressed by Mr. Wayman to the National Supply Company under date of August 24, on which there is a pencil mark, "F. Collins"; that is your name, is it not?

A. It is.

Q. Is that your handwriting?

A. No, sir; that means that the boy who opened the mail referred it to me.

Q. Here is a letter of August 26th from the National Supply Company to Mr. Wayman; a letter of August 25 from the National Supply Company to Mr. Wayman; a letter of September 3, written by Mr. Wayman to the National Supply Company, and a letter dated September 1, 1910, to Mr. H. S. Gardiner, care of the National Supply Company, written by Mr. Wayman; a letter of September 7, from Mr. Wayman to the National Supply Company; in answer to the letter of the 2nd of September from the National Supply Company to Edwin L. Wayman; a letter dated September 8, 1910, to the National Supply Company from Mr. Wayman; the last mentioned being a copy; these letters are produced from your files, are they not?

A. Yes, sir.

Mr. GROSVENOR: I will offer those letters in evidence that have just been referred to by counsel for the Defendants, as "Petitioner's Exhibit No. 275."

Letters referred to were then marked and filed as "Petitioner's Exhibit No. 275."

By Mr. NOBLE:

Q. You did make the agreement to which you have referred, through the instrumentality of Mr. Torrance—by the way, did you state what the date of that agreement was?

A. You cannot get me to say that I made an agreement, because I did not. What is the use of referring to an agreement that does not exist.

Q. You asked Mr. Torrance to try to sell you sanitary enameled iron ware, didn't you?

A. Yes.

Q. And he said he would try to fix it with Wayman?

A. Yes, sir.

Q. And thereafter you were able to obtain sanitary enameled iron ware from the Standard Manufacturing Company?

A. Yes, sir.

Q. You had several conversations that brought about that result?

A. Yes, sir.

Q. Now, let us assume, just for the sake of argument that that was an agreement; you need not say that it is an agreement, but between what dates did you arrive at that concrete result? 1

A. I cannot tell you.

Q. Was it—

A. (Interrupting): Along in July or August; I am just guessing at that; there is so much which transpired.

Q. Somewhere about the middle of July, wasn't it?

A. I cannot say, but somewheres in July or August.

Q. Subsequent to that time, did you get licensed sanitary ware from any of the other licensed manufacturers? 2

A. United States shipped some ware; in fact, they began to solicit us, and I think we had some ware from the Cahill Company; Cahill wrote us and said that they understood we were to be sold enameled ware, or else they sent a representative there to see us.

Q. How many of the other licensed manufacturers sent you representatives or solicited your orders?

THE WITNESS: After that time?

Mr. NOBLE: Yes, after this concrete result was obtained after your conversations with Mr. Wayman? 3

A. I did not obtain any arrangement with Mr. Wayman that I know of; put that in the record.

Mr. NOBLE: I said concrete result.

THE WITNESS: But you emphasized it. I presume I was called on by two or three others.

Q. And did they all assume that you had the right to purchase licensed enameled iron ware?

A. Yes, sir; and I let them assume it.

Q. Did they tell you who had informed them?

A. No, sir. 4

Q. Didn't they tell you that Mr. Wayman had notified them that you had the right to purchase sanitary enameled iron ware?

A. No, sir.

Q. You do not recall any letters which you saw saying that they had been informed by Mr. Wayman that you had a right to purchase their ware?

A. They sent their various emissaries who wanted to

1 sell us, and to some I said that I was very glad to know it and to others I said that I did not know anything about it.

Q. Did you tell them how you reached this concrete result which has been described?

THE WITNESS: Which you have described.

Mr. NOBLE: Either one.

A. No.

Q. Did you talk to Mr. Wayman about that over the telephone?

A. I did not talk to Mr. Wayman about that matter at
2 all; make a note of that.

Q. Did you talk to Mr. Wayman about the concrete result which had been arrived at through Mr. Torrance?

A. I did not; no, sir.

Q. Did you talk to him about selling licensed enameled ware?

A. I did.

Q. What was the substance of that conversation, that is subsequent to the talk with Mr. Torrance?

A. He called me about two or three weeks ago and asked me about a certain matter about a guarantee on tubs, and I
3 told him I had made everything plain to Mr. Ahrens, whom I had discussed the matter with in Chicago, and that I could not say anything further to him. In other words, I, as far as possible, in every way, shape or form, avoided Mr. Wayman either by telephone or by correspondence, because I was afraid if I had anything to do with him about this proposition, that he would get me in trouble—

Mr. NOBLE (Interrupting): I move that that answer be stricken out. I move that the latter part of the answer be stricken out as being immaterial and irrelevant and not responsive to the question.

4

Q. I asked you if you had any conversation with Mr. Wayman subsequent to your talk with Mr. Torrance about the licensed sanitary enameled ware?

A. It is all down there; you can take your pick.

Mr. NOBLE: Put that all down and note the question which I asked the witness.

THE WITNESS: You can pick it all out, if you wish. I have some right, I think.

Q. When were you subpœnaed to come here? 1

A. Saturday.

Q. When were you served with that subpœna?

A. Saturday.

Q. You were subpœnaed to be here Saturday?

A. No, Monday, and I asked that it be put off because I could not get here without irreparable damage to the witness.

Q. Before coming here had you shown any one representing the Government these letters (indicating)?

A. I had not.

Q. Had you told anybody about the arrangement which 2
you had made through Mr. Torrance and which you described a while ago?

A. No, sir; I told nobody, because it was a confidential matter and I disliked to describe it here.

Q. When you say that you spoke to Mr. Ahrens about some guarantee about tubs, you wanted Mr. Wayman to find out from Mr. Ahrens what you had said to him?

A. Yes.

Q. What had you said to Mr. Ahrens?

A. I said that in my opinion he could not market the tubs unless it carried a full guarantee and Mr. Ahrens had 3
to get, or thought he had to get that permission from Mr. Wayman. Mr. Wayman then called me up and I referred him back to Mr. Ahrens, as he was in a position to give him all the information.

Q. Did Mr. Torrance tell you that after he was able to fix this matter with Mr. Wayman that you would have to adhere to the terms of the Jobber's License Agreement?

A. No, he did not; because no one can dictate to me what I should do in the conduct of my business; he probably requested that—

Q. With all apologizes to the touchy witness, I will 4
change the language and say, "Did he request you"?

Mr. GROSVENOR: I object to that language. The witness is to answer all questions.

THE WITNESS: If I cannot amplify my answer, I will refuse to answer the questions.

Q. Did Mr. Torrance say or suggest that if he was able to fix the matter with Mr. Wayman he would expect you to maintain the part and parcel of the agreement?

son that the record, according to my recollection, does not show anything like that. Nothing was said in my questions to the witness about fixing it with Mr. Wayman.

THE WITNESS: That is the part that is wrong in that question.

The stenographer then read the question.

THE WITNESS: I said if he fixed it.

Q. Then, you said if Mr. Torrance fixed it so you could get licensed sanitary ware from the Standard Sanitary Manufacturing Company that you would, as an inducement for his so fixing it, be willing to buy all your goods from the Standard Company?

A. Yes.

Q. And Mr. Torrance said, "Well, I will try to fix it" or "have it fixed with Mr. Wayman"; of course, I do not pretend to quote his words, but words to that effect?

A. He said he would have to fix it. I did not know whether he would have to fix it with Wayman or not, but I assume that he did.

Q. Now, in a letter signed "F. C.", is that you—

A. Yes.

Q. And addressed to the Standard Sanitary Manufacturing Company, under date of July 16, 1910, there appears this sentence: "Mr. Wayman said he saw no reason why, inasmuch as we ordered all our sinks and sink backs that way and were willing to order 12 to 50 pieces at a time of the staple sizes, that this exorbitant overcharge for special drilling should not be waived in our case. He said he would talk to you about the matter and that I would hear from you but I have not to date." That has reference to this same drilling question which you were explaining awhile ago to counsel for Government; with whom was that conversation?

A. That conversation was held in Mr. Torrance's office and they brought Mr. Wayman over there.

Q. And the conversation was had between you, Mr. Torrance and Mr. Wayman?

A. No, the conversation was had between me and Mr. Ahrens, with Mr. Wayman as an auditor; he listened to what was gone. When it was through he made that remark to Ahrens, I did not ask him to make it.

Q. It was made in your presence about a subject matter which you were endeavoring to bring about? 1

A. Thrashed out with Mr. Ahrens, yes.

Q. And you again bring it to the attention of the Standard Company, because at that conversation Mr. Wayman said, as you quote him here, "he saw no reason why inasmuch as we ordered all our sinks and sink backs that way * * * this exorbitant overcharge on special drillings should not be waived in our case." That is the reason you brought it to his attention, is it not?

A. No, because in a latter telephone conversation I had with Mr. Ahrens, he had told me that he had agreed with me 2 that would not be a good honest charge, and in our case it would not be eliminated, but he would have to get Wayman's permission before he, Torrance, could do it.

Q. And you understood that—

A. That is good English.

Q. And it was for the purpose of getting Wayman's permission, as I understand you, that Wayman was brought into the room at the time of this talk?

A. Wayman was brought in without my knowledge. If I had known that he was to be there, I would not have been there. 3

Q. Well, was that ever done?

A. It was never done.

Mr. GROSVENOR: Are you referring to the same matter now as is referred to in Exhibit No. 264?

THE WITNESS: Yes, sir.

Mr. GROSVENOR: I will offer this letter (indicating) now as "Petitioner's Exhibit No. 276."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 276."

Mr. GROSVENOR: This letter reads as follows: 4

"July 16/1910.

"Standard Sanitary Mfg. Co.,
F. J. Torrance, Vice-Pres.,
Pittsburg, Pa.

"Dear Sir:—

"If you will remember when I was in your office last we discussed the matter of 10" centers on our sinks and sink backs.

"We must have this drilling in this territory due to to the fact that it has become standard and this standard was put in force on account of probably half the sinks having three cock holes.

"You can put three cock holes in a sink 4" centers, but 5" center to center makes the best arrangement, therefore when only two cocks are used our Trade all want 10" centers.

"Mr. Wayman said he saw no reason why, inasmuch as we ordered all our sinks and sink backs that way and were willing to order 12 to 50 pieces at a time of the staple sizes, that this exorbitant overcharge for special drilling should not be waived in our case. He said he would talk to you about the matter and that I would hear from you but I have not to date. Will you kindly advise?

"Yours truly,

"Dict. F.C. F.C."

THE WITNESS: You know, every way we turned, we ran against Mr. Wayman. We could not get away from him.

Q. Mr. Collins, following your talk with Mr. Torrance, which we have had fully described heretofore, and in which you asked him to sell you licensed ware, and in which he said he would try to fix it so that he could do it, or whatever his language was, which you have used, did you give instructions to your salesmen not to sell any goods below the prices in the price list?

A. No, I don't think we gave them any definite—we probably gave them our usual bulletin—the Company would buy those goods and tell him that was our limit price without conferring with the office.

Q. I will read you this sentence contained in a letter dated September 13, in which you, among other things, say: "Owing to the prices we are obliged to pay you for enameled ware we cannot see our way clear to make a profit at anything below your resale price, and as a consequence, I have instructed all our salesmen that we would accept no business on enameled ware of anything lower than this resale price." Does that correctly summarize the instructions which you gave to your selling agents?

A. Accept that they were not permitted to sell less than

that price, but in some cases, we had prices higher than that and if they wanted to go lower than that they had to get my personal permission. 1

Q. Then, the sentence substantially summarizes your instructions?

A. Yes, sir.

Q. In your letter of September 13, 1910, addressed to Mr. Torrance, there occurs this sentence, all relative to this sink drilling: "You practically agreed with me on this and said that you thought this could be adjusted without any difficulty, to take care of our requirements in this territory, that you would take the matter up and the third party who was present, also stated that in his opinion special dispensation could be given us." Who was that third party? 2

A. Wayman, that is the conversation that I spoke of before.

Q. The subject matter of the conversation was all this same drilling that you told counsel for Government about, is that right?

A. Yes, sir.

Mr. GROSVENOR: I will offer that letter as "Petitioner's Exhibit No. 277."

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 277." 3

Mr. GROSVENOR: That letter reads as follows:

"Sept. 13/1910.

"F. J. Torrance, 1st Vice Pres.,
Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

"Dear Sir:—

"I find on my return considerable correspondence with reference to sink drilling. Don't you remember a conversation that I had in your office wherein this very matter was raised and I fully explained to you the difficulty we had on account of so much soft water being used through this territory, which had made it necessary for a great many sinks to be drilled for three cocks and as a consequence had established a 10" center to center where drilled for two cocks and a 5" center to center where drilled for three cocks. 4

"Now of course I realize that where the third cock

1 hole is cast a reasonable charge should be made, but I do not believe there is any reason for making a charge for the different spacing.

"You practically agreed with me on this and said that you thought this could be adjusted without any difficulty, to take care of our requirements in this territory, that you would take the matter up and the third party who was present, also stated that in his opinion special dispensation could be given us.

"We do not order these sinks one at a time but order good fair-sized quantities and they can be run
2 through the shop it seems to us in lots without any additional expense whatever.

"When you telephone me to-morrow, please collect your data on this subject also and let me hear from you, as we are in need of sink backs on our orders placed with you and also some one piece sinks.

"Yours truly,

"THE NATIONAL SUPPLY CO.,

"F. C.

"Dict. F.C. Second Vice-President."

3 Q. In a letter dated July 5th, and addressed to the Standard Sanitary Manufacturing Company you say: "In addition to the orders I sent you Friday afternoon the following are on our books, according to our records"; then follows a list of orders for sanitary enameled iron ware?

THE WITNESS: Is that the United States or the Standard?

Mr. NOBLE: The Standard?

A. Yes, sir.

Q. Did you afterwards get those goods?

A. I presume so. The Standard has not refused to ship
4 us any goods.

RE-DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Collins you have testified that you have been buying goods from the Standard Sanitary Manufacturing Company since June 1st. I show you a Jobber's License Agreement which is Exhibit No. 11 and I direct your attention to the first page of that Exhibit. Will you state whether you have been allowed the discounts given on that page?

A. We have.

Q. By the Standard? A. Yes, sir. 1

Q. Now, turning to the second page of the exhibit and directing your attention to Paragraph 7 headed "Rebates", that states: "If all the conditions of this agreement have been complied with and you have confined your purchases to the licensed manufacturers, we will pay you rebates on such purchases as you have made from us as follows", and then following that is a table of discounts or rebates; have you been allowed those rebates? A. No, sir.

Q. I direct your attention to Paragraph 8 of the exhibit which reads: "If your purchases of material, less returned goods, covered by the various schedules from the 2
following manufacturers licensed under the patents herein enumerated before"—then follows a list of the sixteen defendants—"have aggregated sums as follows and if all the conditions of this agreement have been complied with the company will pay the purchaser rebates on such purchases as they have made from the company during the period ending December 31, 1910, as follows:" then follows a list of discounts governed by the amount purchased, the largest being 5 per cent. rebate for $30,000. Have you been allowed those rebates? A. No, sir.

Q. On any of these goods which you have purchased 3
from the Standard? A. No.

Q. Are you a large customer of the Standard?

A. Well, not knowing the volume of their business, that is hypothetical.

Q. As jobbing houses go?

A. I should say we were very much above the average as an enamel account.

Q. Your annual purchases of sanitary enameled ware run into the hundreds of thousands?

A. No, run from 60 to 100 thousand dollars a year.

RE-CROSS EXAMINATION BY MR. NOBLE: 4

Q. You hope to get the rebates referred to in the 7th paragraph and 8th paragraph to which counsel for the Government directed your attention and which he read to you, do you not? A. Yes, sir.

Q. Do you expect to get them?

A. If we have to sue for them.

Q. Upon the language or terms read to you by counsel for Government? A. No.

Q. Do you expect to get the rebate for purchasing more than $30,000 worth of goods? A. Yes.

Q. And what percentage of your business approximately is the sanitary enameled iron ware business?

Mr. GROSVENOR: This witness has testified, I think, that his company manufacture some articles.

Mr. NOBLE: That is where you purchase goods from other manufacturers, as compared with the balance of your business.

Mr. GROSVENOR: I suggest that counsel confine himself to his business in plumbing supplies.

Q. Put it this way: What percentage of your business, as a jobber of plumbing supplies, does your sanitary enameled iron ware business amount to, confining your answer to that portion which you purchase from other persons?

A. Oh, from 15 to 20 per cent., I should assume.

RE-REDIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Did Mr. Torrance ever promise you or say to you that his company would pay you these rebates which I have read and which are referred to in Paragraphs 7 and 8 of Government's Exhibit No. 11? A. I cannot recall.

Q. You do not recall that he has said anything?

A. No, I do not.

Q. How do you expect to get them?

A. Well, if we do not get them voluntarily, we will sue for them and collect them by legal means.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Mr. GROSVENOR: Counsel for Government rests and suggests that we adjourn until January 9, to begin the taking of the testimony for the defendants, and also wishes to state on the record that the Government will expect the Defendants to put in their testimony within the same amount of time that the testimony of the Government was put in the record, and desires to give this notice so that counsel will understand that counsel for Government will oppose any extension of time requested of the Court.

Mr. NOBLE: Counsel for the Defendants, of course, reserves the right of cross examination of the witness

Wayman, as stated in the record of yesterday, and in reply to the notice given by counsel for the Government, desires to state that he will make an examination of the record thus far made by counsel for Government and put in his defense from time to time as speedily as may be possible. Counsel for defense also calls attention of counsel for the Government to the fact that the indictments are pending of which counsel for Government has knowledge, which will require much attention on the part of counsel for defense, so that the notice given must be understood as received with full knowledge on the part of counsel for the Government as to the existing facts. 1 2

Adjourned.

3

4

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19[illegible]

No. 9[illegible]

STANDARD SANITARY MANUFACTURING COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

GOVERNMENT EXHIBITS.

FILED FEBRUARY [illegible], 1913.

(23,064)

THE UNITED STATES

v.

STANDARD SANITARY MANUFACTURING COMPANY, AND OTHERS.

RECORD—VOLUME II.

E. GOVERNMENT'S EXHIBITS.

INDEX TO EXHIBITS.

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Exhibit	1.	List of members and officers of the Sanitary Enameled Ware Association which disbanded June 1. See Vol. I, p. 8	1
Exhibit	2.	Resolution of March 30, 1910, providing for appointment of Price and Schedule Committee	2
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PETITIONER'S EXHIBIT No. 1.

Filed Oct. 31, 1910.

THE SANITARY ENAMELED WARE ASSOCIATION

Offices
1509 Arrott Bldg.
Pittsburg

E. L. Wayman, Commissioner.

Officers.

D. A. Carpenter, Pres. Mansfield, O.
A. H. Cline, Jr. Treas. Pittsburgh, Pa.
H. M. Hoelscher, Sec'y. Chicago, Ill.

Ex Officio Members of Board of Directors.

Directors.

Walter J. Kohler, Chairman	Sheboygan, Wis.	Elected for a term of two years.
Francis J. Torrance, Vice-Chairman	Pittsburg, Pa.	
L. C. Huesmann,	Indianapolis, Ind.	
J. A. Kelly,	Pittsburgh, Pa.	Elected for a term of one yr.
Anton Weiskittel,	Baltimore, Md.	

Members		*Representatives*
Blairsville Enameled Ware Co.	Blairsville, Pa.	Mr. F. D. Cook,
Barnes Mfg. Co., The	Mansfield, Ohio.	" T. R. Barnes
Cahill Iron Works, The	Chattanooga, Tenn.	" F. H. Caldwell
Clymer Mfg. Co.,	Indiana, Pa.	" U. A. Guthrie
Colwell Lead Company,	New York,	" J. T. Duryea.
Day-Ward Co., The	Warren, Ohio.	" A. G. Ward,
Humphryes Mfg. Co., The	Mansfield, O.	" D. A. Carpenter
Iron City Sanitary Mfg. Co.	Pittsburgh, Pa.	" J. A. Kelly
Kohler Sons Co., J. M.	Sheboygan, Wis.	" W. J. Kohler
Mott Iron Works, J. L.	New York,	" E. Hammann,
McVay & Walker,	Braddock, Pa.	" Alex C. Walker
McCrum-Howell Co.	New York City.	" H. T. Gates
National Sanitary Mfg. Co.	Salem, Ohio.	" F. G. Borden,
Standard Sanitary Mfg. Co.	Pittsburgh, Pa.	" F. J. Torrence,
Union Sanitary Mfg. Co.	Noblesville, Ind.	" L. C. Huesmann
United States Sanitary Mfg. Co.,	Pittsburgh, Pa.	" A. H. Cline, Jr.
Wolff Mfg. Co., L.	Chicago, Ill.	" H. M. Hoelscher
Weiskittel & Son, A.	Baltimore, Md.	" A. Weiskittel
Wheeling Enameled Iron Co.	Wheeling, W. Va.	" J. E. Wright

PETITIONER'S EXHIBIT No. 2.

Filed Oct. 31, 1910.

March 30, 1910

Resolved that the matter of License Agreement and Resale Agreement be referred to a Special Committee of five (5); said Committee to be elected at this meeting and to be known as the Price and Schedule Committee, which Committee shall be elected directly should the motion to adopt this Resolution prevail.

This Committee shall interview the various manufacturers, obtaining their consent as evidenced by their signatures to the above mentioned Agreements. And when the consent of 85 per cent of the production is had, the Agreements shall become binding and effective.

The Commissioner is authorized to levy a special assessment equal to the amount of one quarter's dues as now paid into the Association.

The proceeds of said special assessment to be used for the purpose of defraying the necessary expenses incurred in carrying into effect the object for which this Convention was called. The undersigned agree to the above conditions, and in so appending their signatures hereby agree to give their prompt cooperation to the matter in question.

Witness the Hands and Seals of the Parties hereto:

The Cahill Iron Works	per F. H. Caldwell, Pres. per E. L. Wayman,
L. Wolff Mfg.	Herman M. Hoelscher, Secy.
The Day Ward Co.	A. G. Ward. V. P.
National Sanitary Co.	F. G. Borden, Pres.
Blairsville Enameled Ware Co.	F. D. Cook, Pres.
A. Weiskittel & Son Co.	Anton Weiskittel
United States Sanitary Mfg. Co.	C. F. Arrott, Prest.
The McCrum-Howell Co.	Howard T. Gates, Secretary
The J. L. Mott Iron Works subject to confirmation or revocation by our General Manager, John Reid	E. Hammann
The Barnes Mfg. Co.	T. R. Barnes, Secy. & Gen. Mgr.

The Humphryes Mfg. Co.	A. I. Laing	1
	by Frank Torrance, V. Pres.	
Standard Sanitary Mfg. Co.		
Union Sanitary Mfg. Co.	by C. E. Gates	
Wheeling Enameled Iron Co.	by J. E. Wright, Pres. per E. L. Wayman.	
Clymer Mfg. Co.	W. A. Guthrie, Pres.	
		2
		3
		4

PETITIONER'S EXHIBIT No. 3.

Filed Oct. 31, 1910.

EDWIN L. WAYMAN
1509 Arrott Bldg.
Pittsburgh

MEMORANDUM OF AGREEMENT.

We hereby agree to execute with E. L. Wayman of the City of Pittsburg, as Licensor, on or before April 15th, 1910, a License Agreement for the Manufacture of Sanitary Enameled Ware under the following United States Letters Patent.

"Various Patents covering Pneumatic Dredgers."
(to be enumerated in detail).

and such additional Patents as may come into his possession, upon the Terms, Conditions, etc., as hereinafter stated or provided for:—

1. The License Agreement to cover the following Schedules of Enameled Ware.

   Schedule 1. 5 Year Guaranteed Baths.
   " 2. 2 " " "
   " 3. All other Grades of Baths.
   " 4. Small Ware, Lavatories, etc. and R.R. sinks
   " 5. Flat Rim Sinks.
   " 6. Competitive Lavatories 552 to 562 Inclusive 565 and 535.

2. The amount of Royalty to be as follows:

   $5.00 per day per furnace in operation with a rebate of 90 per cent, beginning with the 1st month of the 2nd Period and monthly thereafter, if the terms of the License have been complied with.

3. For each violation of the Price Regulations of the License Agreement we agree to forfeit a sum equal to the amount of the shipment in question, and such other penalties as may be agreed on.

4. The Selling Prices to the Jobbers to be established through the Licensor by a Price Committee appointed by the various manufacturers.

5. The Resale Prices to the Jobber, taking into consideration the rebate for observance of Buying and Selling Regulations, shall be figured as follows: 1

High Grade Goods	25% above Jobbers cost.
Competition Goods	16 2/3% above Jobbers cost.

6. The Rebates to Jobbers shall be as follows:

10%, payable at end of Period for strict observance of agreements, the details of the manner in which the rebate shall be made, to be determined.

7. The length of the Rebate Periods shall be 3 months beginning April 15th, 1910, with the exception of the first period, which shall end July 1st. 2

8. The License Agreement and Resale Prices shall become effective April 15h, and the agreement to be executed between the Manufacturers and Jobbers shall contain a clause to the effect that all material purchased or on hand previous to the above date shall be sold at the Resale Prices that may be established.

9. The details of Contract Forms between the Manufacturers and the Licensor shall be drawn up by the Licensor and submitted for approval at the next Special Meeting to be held in New York City. 3

10. The Licensor will also submit the same covering Agreement between Manufacturers and Jobbers.

11. The following "Preferential Discounts" from the selling Prices established by the Licensor will be allowed the various Manufacturers *on Sales to Jobbers only.*

Schedule 1—5 year Guaranteed Baths. 4
" 2—2 " " "
" 3—All other Grades of Baths.
" 4—Small Ware—Lavatories, etc. & RR Sinks.
" 5—Sinks, flat rim.
" 6—Competitive lavatories 552-562 Inclusive 565 and 535.

SCHEDULES.

Manufacturers	1	2	3	4	5	6
Standard	None	None	None	None	None	None
Wolff	"	"	"	"	"	"
U. S.	"	"	"	"	"	"
Kohler	"	"	"	"	"	"
Barnes	"	"	"	"	"	"
Cahill	"	"	"	"	"	"
Mott	"	"	"	"	"	"
Union	5%	2½%	"	2½%	"	"
Colwell	5%	2½%	"	2½%	"	"
Clymer	5%	2½%	"	2½%	"	"
Blairsville	5%	2½%	"	2½%	"	"
McVay & Walker	5%	2½%	"	2½%	"	"
Weiskittel	5%	2½%	"	2½%	"	"
National	5%	2½%	"	2½%	"	"
Iron City	5%	2½%	"	2½%	"	"
Humphryes	5%	2½%	"	2½%	"	"
Day-Ward	2½%	2½%	"	2½%	"	"
McCrum-Howell	5%	2½%	"	2½%	"	"
Wheeling	5%	2½%	"	2½%	"	"

12. The Length of time for which the License Agreement will be entered into and such other details as may be necessary for the perfection of the arrangement to be determined at the next meeting of the various Manufacturers.

Signed

The McCrum-Howell Co.
Lloyd G. McCrum, Prest.
Blairsville Enameled Ware Co.
A. A. Shipman Treas.
National Sanitary Mfg. Co.
F. G. Borden, Pres.
The Barnes Mfg. Co.
T. R. Barnes, Secy. & Gen. Mgr.
The Humphryes Mfg. Co.
By Reed Carpenter, Treas.
Wheeling Enameled Iron Co.
J. E. Wright, Prest.
Standard Sanitary Mfg. Co.
By Francis J. Torrance, V. Pres.
L. Wolff Mfg. Co.
Herman M. Hoelscher, Secy.
United States Sanitary Mfg. Co.
By A. H. Cline, Jr. Secy.
Anton Weiskittel & Son Co.
By Anton Weiskittel
Union Sanitary Mfg. Co.
per C. E. Gates,
2nd V. P. & Gen. Mgr.

PETITIONER'S EXHIBIT No. 4. 1

Filed Oct. 31, 1910.

Tel. address 2100 Bryant

Cable or Marconi address
Muschenheim, New York

Hotel Astor,
Times Square,
New York.

Wm. C. Muschenheim

Whereas: A proposition is pending for a license agreement and a resale price for the benefit of the jobbing trade, and whereas long-time contracts are a menace to such proposition, We, the undersigned mfr. of En. Ware hereby agree to take no orders for delivery beyond May 31st, 1910, this agreement is not binding upon the signers unless all members of the Enam. Ware mfgrs. are parties thereto and append their signatures. 2

The within is agreed to.

Union Sanitary Mfg. Co. By C. E. Gates
L. Wolff Mfg. Co. Herman M. Hoelscher, Secy.
The Day Ward Co. By A. E. Ward & Co. 3
The United States Sanitary Mfg. Co. A. H. Cline Jr. Secy.
The Cahill Iron Works By F. H. Caldwell, Prest.
Blairsville Enameled Ware Co. F. D. Cook, Prest.
A. Weiskittel & Son Co. Anton Weiskittel
The McCrum-Howell Co. Howard T. Gates, Secretary
The Barnes Mfg. Co. T. R. Barnes, Secy. & Gen. Mgr.
The Humphryes Mfg. Co. A. I. Laing
Clymer Mfg. Co. W. A. Guthrie, Pr.
National Sanitary Mfg. Co. F. G. Borden, Pres.
The J. L. Mott Iron Works, E. Hamann
Standard Sanitary Mfg. Co. by Franc J. Torrance, V. P. 4
Wheeling Enameled Iron Co. by J. E. Wright—per E. L. Wayman.
Kerner Mfg. Co. J. A. Frauenheim, Prest.

PETITIONER'S EXHIBIT No. 5.

Filed Oct. 31, 1910.

AGREEMENT.

THIS AGREEMENT made this *4th* day of *May*, 1910, by and between Edwin L. Wayman, of Pittsburg, Allegheny County, Pennsylvania, party of the first part, and the Standard Sanitary Manufacturing Company, a corporation organized and existing under the laws of the State of New Jersey, having a place of business at Pittsburg, in said County and State, party of the second part,

WITNESSETH: That whereas the party of the second part is the owner of the entire right, title and interest in and to patent No. 633,941 to James Arrott, dates September 26th, 1899, for Dredger for Pulverulent Material:

AND WHEREAS the party of the first part desires to secure the exclusive right, title and interest in and to said Letters Patent and inventions:

NOW THEREFORE, be it known that the parties have agreed as follows:

FIRST. The party of the second part hereby agrees that it will assign, sell and set over unto the party of the first part, its entire right, title and interest in and to said Letters Patent and inventions, for and in consideration of a cash payment by the party of the first part, to be hereafter agreed upon, and for and in consideration of the following covenant on the part of the party of the first part.

SECOND—The party of the first part, for and in consideration of the said assignment, agrees that the party of the second part shall, at the expiration of *two* years from the date hereof, have the right to request, if it shall so desire, a reassignment to it of the said patent; and further agrees if at any time after the expiration of the said period, the party of the second part shall request such reassignment, that he will at once, and without further consideration, execute and deliver any and all papers necessary to effect such reassignment.

IN WITNESS WHEREOF, the party of the first part has affixed his hand and seal the day and year first above written, and the party of the second part has caused these

presents to be executed by its Vice President, and attested by its Secretary. 1

EDWIN L. WAYMAN
L. S. [SEAL.]
STANDARD SANITARY MFG CO
By FRANCIS J. TORRANCE.
Vice President.

[SEAL.] Standard Sanitary
Manufacturing Co. 1899.

Attest:
W. A. Myler.
Secretary. 2

3

4

PETITIONER'S EXHIBIT No. 6.

Filed Oct. 31, 1910.

ASSIGNMENT.

WHEREAS, the Standard Sanitary Manufacturing Company, a corporation organized and existing under the laws of the State of New Jersey, and having a place of business at Pittsburgh, Pennsylvania, is the owner of all the right, title and interest in and to the following Letters Patent, viz:

Pat. No.	*Date*	*Inventor*	*Title*
633,941	Sept. 26th, 1899	James Arrott	Dredger for Pulverulent Material.

AND WHEREAS, Edwin L. Wayman, a resident of Pittsburg, in said County and State, desires to acquire all right, title and interest in and to said patent, and in and to the invention covered, or intended to be covered, thereby;

NOW, THEREFORE, be it known, that for and in consideration of the sum of *Ten Thousand Dollars ($10,000.00)* by the said Edwin L. Wayman in hand paid the receipt of which is hereby acknowledged, the STANDARD SANITARY MFG. CO. aforesaid has assigned, sold and transferred, and by these presents does assign, sell and transfer, unto the said Edwin L. Wayman, the entire right, title and interest in and to said Letters Patent and invention, the same to be held and enjoyed by the said Edwin L. Wayman, his heirs, executors, administrators and assigns, as fully and completely as the same would have been held and enjoyed by the said, STANDARD SANITARY MFG. CO. had this sale and assignment not been made.

IN WITNESS WHEREOF, the STANDARD SANITARY MFG. CO. has caused these presents to be signed by its Vice President and attested by its Secretary, this *fourth* day of *May*, 1910.

STANDARD SANITARY MFG. CO.
By FRANCIS J. TORRANCE,
Vice President.

[SEAL.] Standard Sanitary
Manufacturing Co., 1899.

Attest:
W. A. Myler.
Secretary.

Allegheny County, ss. 1

Before me, a Notary Public for said County, personally appeared Francis J. Torrance, known to me to be the Vice President of the STANDARD SANITARY MFG. CO., and the person who executed the foregoing instrument on behalf of said Company, and acknowledged the same to be the act and deed of said Company.

WITNESS my hand and seal May 4th, 1910.

AGNES C. WAY
Notary Public.

My commission Expires January 16th, 1913.

2

DEPARTMENT OF THE INTERIOR.

UNITED STATES PATENT OFFICE.

(Patent Office
[SEAL.] United States
of America)

RECEIVED AND RECORDED on the 2nd day of June 1910, in Liber X, 84, page 61, of Transfers of Patents.

IN TESTIMONY WHEREOF, I have caused the seal of the Patent Office to be hereunto affixed.

E. B. MOORE, 3
Commissioner of Patents.

EXD./E.H.G.

4

GOVERNMENT'S EXHIBIT 7.

PETITIONER'S EXHIBIT No. 7.

Filed Oct. 31, 1910.

Section—2—Minutes

Dated Feb. 5th, 1910.

Third Regular Meeting
of the Members of the

SANITARY ENAMELED WARE ASSOCIATION

Feb. 1st, 1910.
at Pittsburgh.

Present

Members	*Representatives*	
Blairsville Enameled Ware Co.	299 Broadway, N. Y.	Mr. A. W. Shipman.
		" F. D. Cook
Barnes Mfg. Co.	Mansfield, Ohio.	" T. R. Barnes.
Clymer Mfg. Co.	Indiana, Pa.	" W. A. Guthrie
Day-Ward Co.	Warren, Ohio.	" A. G. Ward.
Humphryes Mfg. Co.	Mansfield, O.	" H. D. Kenney
Iron City Sanitary Mfg. Co.	Pittsburgh, Pa.	" J. A. Kelly
J. M. Kohler Sons Co.	Sheboygan, Wis.	" W. J. Kohler
Mott Iron Works, The J. L.	New York City.	" Ed. Hammann
McCrum-Howell Co.	New York City.	" H. T. Gates.
National Sanitary Mfg. Co.	Salem, Ohio.	" F. G. Borden
Standard Sanitary Mfg. Co.	Pittsburgh, Pa.	" W. A. Myler
Union Sanitary Mfg. Co.	Noblesville, Ind.	" C. E. Gates
U. S. Sanitary Mfg. Co.	Pittsburgh, Pa.	" A. H. Cline, Jr.
Wolff Mfg. Co.	Chicago, Ill.	" H. M. Hoelscher
Weiskittel & Son Co.	Baltimore, Md.	" A. Weiskittel

* * * * * * * *

The Commissioner called attention to a request from the New York Jobbers that the Manufacturers meet their Committee to confer on the subject of Resale Prices and the recognition only of Blue List Jobbers. It was the sense of the Meeting that the Commissioner advise them to the effect that the Manufacturers would be pleased to meet their Committee just as soon as their own plans on this subject were in more complete form and that considerable progress in this direction had been made.

There being no further business, the Meeting adjourned.

PETITIONER'S EXHIBIT No. 8. 1

Filed Oct. 31 1910.

SAMPLE COPY OF PROPOSED FORM LICENSE AGREEMENT.

THIS AGREEMENT, Made in duplicate this ..... day of ....., 191.., between Edwin L. Wayman, a resident of the City of Pittsburgh, State of Pennsylvania (hereinafter called the "Licensor"), party of the first part and.....
.....
a corporation duly organized and existing under and by 2
virtue of the laws of the State of.....(hereinafter called the "Licensee"), party of the second part.

WITNESSETH:

THAT WHEREAS, the said Wayman owns or controls or has the right to grant licenses under certain Letters Patent pertaining to the manufacture of Sanitary Iron Enameled Ware, enumerated in "Schedule of Patents," hereto annexed, and

WHEREAS, the Licensee is desirous of acquiring a License under said Letters Patent of the character and upon the 3
terms and conditions herein set forth;

NOW, THEREFORE, for and in consideration of the covenants of this agreement, the parties hereto agree as follows:—

1. The Licensor hereby grants to the Licensee, subject to the provisions hereinafter contained, a non-exclusive License to practice in the manufacture of Sanitary Iron Enameled Ware, the processes patented in said several Patents, to make and use in such manufacture the machines and devices patented in said Patents and to use and sell 4
goods so made; the said License being non-assignable and non-transferable except to successors to substantially the entire good-will and business of the Licensee, and this License shall be available for the Licensee and its successors only so long as it or they have not, prior to the date hereof, been engaged in the manufacture of Sanitary Iron Enameled Ware.

CLAIMS. 2. The Licensor hereby agrees to suspend his claims against the Licensee and its cus-

1 tomers or patrons for damages or profits which he may be entitled to receive for any claims for any past infringement of said patent by said Licensee, as long as said Licensee continues to perform all of its obligations under this contract.

3. So long as the Licensee operates under this License or any renewal thereof and keeps and performs all of the obligations of said License herein contained, the Licensor agrees not to bring action against said Licen-
2 see because of its use of any machines, method or processes now or heretofore used by said Licensee in the manufacture of enameled ware, and to waive any and all claims under any letters patent on any machines, devices, or processes now in use by said Licensee, and to grant to said Licensee full use and enjoyment thereof.

ROYALTIES

4. For the use of the various patents enumerated in "Schedule of Patents," hereto
3 annexed, the Licensee shall pay on the fifth day of each month a royalty amounting to Five ($5.00) Dollars per day for each furnace in operation during the preceding month.

This payment shall be made to the Licensor at his place of business in Pittsburgh, Pa., by cash or other acceptable remittance, and in determining the amount of this royalty each and every one of the furnaces owned by the Licensee shall be considered
4 as in operation each day, unless the said furnace or furnaces shall be shut down for more than a period of six (6) consecutive working days. In case any of the furnaces are thus shut down for more than six (6) consecutive days, the Licensee shall be entitled to a diminution of his License payment at the rate of Five ($5.00) Dollars per day for the number of days shut down.

In order to determine the amount of

actual license payment, together with the remittance hereinbefore provided for payment of royalty, the Licensee shall send to the Licensor a sworn statement, which will be duly verified under oath by some representative of the Licensee, assignated by the Licensor showing the number of furnaces owned by the Licensee at the beginning of the month which the report is intended to cover and the number of days which these furnaces have been operating consistent with the provisions of the foregoing Section of this License. 1 2

PREFERENTIAL DISCOUNTS.

5. This agreement is entered into with the understanding that the Licensee has the privilege of quoting to Jobbers only the following additional discounts from the regular selling prices to the Jobbers as established by the Licensor. These additional discounts when given shall appear on the invoices rendered to the Jobber. 3

6. All terms, conditions, regulations and prices now established by the Licensor and set forth in schedules attached to and made part hereof, shall be in force and effect until other terms, conditions, regulations and prices are substituted therefor by the Licensor, which substitution he is entitled to make from time to time hereafter by notice in writing to the Licensee. The Licensee covenants to adhere to and maintain such terms, conditions, regulations, prices and preferential discounts as may be established by the Licensor from time to time. 4

1 ROYALTY REBATES.

7. If at the end of the fourth month of the first year (said year beginning.....), it shall appear that the Licensee has during the first month complied with all the terms of this agreement, the Licensor shall return the Licensee the following rebate from the royalties paid for said License for said first months' royalties, to wit.....% of the amount originally paid by the Licensee.

8. At the termination of each succeeding month of the said License, if it shall appear 2 that the Licensee has fully complied with the terms of this agreement during the second preceding month, the Licensor shaall make a similar rebate in respect of the royalties paid by the Licensee during the second preceding month.

9. In case of failure on the part of the Licensee to comply fully with the terms of this agreement during any month, the Licensor may withhold any and all unpaid rebates 3 and declare the same forfeited (as hereinafter provided for) as penalty for said violation and shall at once notify the Licensee to that effect.

Penalties shall be deducted from all unpaid rebates as follows:

1. For violation of Price Regulations: An amount equal to the selling value of the shipment or shipments in question. By words "Price Regulations," hereinbefore mentioned, is meant any rules or reg- 4 ulations which cover list or net prices at which the goods covered by this License may be sold, the preferential discounts and the terms of sale.

2. In case of Forfeiture of License: The entire amount of unpaid rebates.

EXPORT.

10. The restrictions herein contained as to the prices at which Enameled Ware is to be sold shall not apply to Enameled Ware sold and exported to foreign countries. 1

11. The books of the Licensee shall be open to inspection, at all reasonable times, by the Licensor or by an accountant appointed by the Licensor.

VALIDITY OF PATENTS.

12. The Licensee admits the validity of said several Patents enumerated herein, for the purpose of this agreement and license only and it is further agreed that upon the termination of this agreement and License for any cause, the Licensee shall not be estopped to deny the validity of the said Patents or any of them. The Licensor agrees that he will, upon the written request of at least three-quarters in number of the Licensees at any time holding Licenses similar to this License, use all legal and equitable means to protect the Licensee in the full use and enjoyment of the rights under this agreement and License from all non-licensed parties using any of said machines, processes or devices, or from any sales infringing said patents by customers or any such parties, either by suits or by bringing them under a similar License. If, however, the Licensor refuses to take such action against such non-licensed parties, other customers, or users of such non-licensed goods, for ninety days after being requested so to do, as before provided, this License shall be voidable at the election of the Licensee communicated in writing to the Licensor, and the Licensee thereafter shall be released from all obligations hereunder, and shall not hereafter be estopped to deny the validity of said Patents or any of them. 2 3 4

PROTECTION OF LICENSEE.

LABELS.

13. No goods manufactured under this License shall be sold unless they bear a registered label owned by the Licensee and in addition thereto a License tag or label approved by the Licensor which License tag or label shall be placed in a visible position on all goods made hereunder and sold by the Licensee.

14. This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of.....years from the date hereof, unless previously terminated as herein provided.

15. This agreement, however, may be cancelled by the Licensor by written notice upon repeated breaches by the Licensee of any of the covenants herein contained.

SCHEDULE OF PATENTS.

Pat. No.	Date.	Inventor	Title.
633,941	Sept. 26, 1899	James Arrott	Dredger for pulverent material.
924,491	June 8, 1909	Charles B. Nesbit	Dredger for Pulverent material
949,625	Feb. 15, 1910	E. Ditheridge	Pneumatic Sieve
939,918	Nov. 9, 1909	William Lindsay	Enameling Powder Distributor
533,062	Jan. 29, 1895	Herman M. Hoelscher	Flushing Rim Slop Sink
838,702	Dec. 18, 1906	Anthony A. Ficener	Sink Attachment
541,068	June 18, 1895	John Clifford and Peter Louis Sutter	Bath Tub, etc.
34,976	Aug. 20, 1901	Almon G. Ward and George E. Day.	Design for a bath tub leg
684,797	Oct. 22, 1901	Almon G. Ward and George E. Day	Bath tub leg
33,465	Oct. 30, 1900	John H. Gavin	Design for a drain board for Sinks.
540,235	June 4, 1895	John Clifford and John H. Gavin	Multiple combined wash bowl and slab

645,517	March 13, 1900	Christian A. Sievert,	Enameling Table
645,393	March 13, 1900	Edward C. Hoelscher and John Clifford	Enameling Table or Machine
684,888	Oct. 22, 1901	Almon G. Ward	Bath tub leg
942,380	Dec. 7, 1909	Geo. W. Franzheim	Leg Fastening
945,457	Jan. 4, 1910	Thomas R. Barnes	Sink Strainer
846,022	March 5, 1907	Thomas R. Barnes	Concealed Hanger

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year above written.

1 **PETITIONER'S EXHIBIT No. 9.**

Filed Oct. 31, 1910.

LICENSE AGREEMENT

THIS AGREEMENT, Made in duplicate this ..... day of .....191.., between Edwin L. Wayman, a resident of the City of Pittsburgh, State of Pennsylvania (hereinafter called the "Licensor"), party of the first part, and .....
.....
a corporation duly organized and existing under and by vir-
2 tue of the laws of the State of.....
(hereinafter called the "Licensee"), party of the second part.

WITNESSETH:

THAT WHEREAS, the said Wayman owns or controls or has the right to grant licenses under certain Letters Patent pertaining to the manufacture of Sanitary Enameled Iron Ware, enumerated in "Schedule of Patents," hereto annexed, and

WHEREAS, The Licensee is desirous of acquiring a License under said Letters Patent of the character and upon the terms and conditions herein set forth;

3 NOW, THERFORE, for and in consideration of the covenants of this agreement, the parties hereto agree as follows:—

1. The Licensor hereby grants to the Licensee, subject to the provisions hereinafter contained, a non-exclusive License to practice in the manufacture of Sanitary Enameled Iron Ware, the processes patented in said several Patents, to make and use in such manufacture the machines and devices patented in said Patents and to use and sell goods so made; the said License being non-assignable and non-
4 transferable except to successors to substantially the entire good-will and business of the Licensee, and this License shall be available for the Licensee and its successors only so long as it or they have not, prior to the date hereof, been engaged in the manufacture of Sanitary Enameled Iron Ware.

CLAIMS. 2. The Licensor hereby agrees to suspend his claims against the Licensee and its customers or patrons for damages or profits

which he may be entitled to receive for any claims for any past infringement of said Letters Patent by said Licensee, as long as said Licensee continues to perform all of its obligations under this contract. 1

3. So long as the Licensee operates under this License or any renewal thereof and keeps and performs all of the obligations of said License herein contained, the Licensor agrees not to bring action against said Licensee because of its use of any machines, method or processes now or heretofore used by said Licensee in the manufacture of enameled ware, and to waive any and all claims under any letters patent on any machines, devices, or processes now in use by said Licensee, and to grant to said Licensee full use and enjoyment thereof. 2

ROYALTIES.

4. For the use of the various patents enumerated in "Schedule of Patents," hereto annexed, the Licensee shall pay on the fifth day of each month a royalty amounting to Five ($5.00) Dollars per day for each furnace in operation during the preceding month. 3

This payment shall be made to the Licensor at his place of business in Pittsburgh, Pa., by cash or other acceptable remittance, and in determining the amount of this royalty each and every one of the furnaces owned by the Licensee shall be considered as in operation each day, unless the said furnace or furnaces shall be shut down for more than a period of six (6) consecutive working days. In case any of the furnaces are thus shut down for more than six (6) consecutive working days, the Licensee shall be entitled to a diminution of his License payment at the rate of Five ($5.00) Dollars per working day for the number of days shut down. 4

In order to determine the amount of

actual license payment, together with the remittance hereinbefore provided for payment of royalty, the Licensee shall send to the Licensor a sworn statement, which will be duly verified under oath by some representative of the Licensee, designated by the Licensor showing the number of furnaces owned by the Licensee at the beginning of the month which the report is intended to cover and the number of days which such furnaces have been operating consistent with the provisions of the foregoing Section of this License.

PREFERENTIAL DISCOUNTS.

5. This agreement is entered into with the understanding that the Licensee has the privilege of quoting to Jobbers only the following additional discounts from the regular selling prices to the Jobbers as established by the Licensor. These additional discounts when given shall appear on the invoices rendered to the Jobber.

	Discounts.
Schedule No. 1. 5 year guaranteed Baths and Receptors	
Schedule No. 2. 2 year guaranteed Baths	
Schedule No. 3. All other Grades of Baths	
Schedule No. 4. Small Wares Lavatories, etc.....	
Exceptions:	
Lavatories, similar to Plate Nos. (Standard) P-558, 559, 561 and 562	

Schedule No. 4½. Roll Rim Sinks, Slop Sinks, Sink Backs and Ends, Drain Boards, Factory and Wash Sinks, Urinals and Urinal Ranges, Closet Bowls and Closet Ranges, Hoppers, Hopper and Trap Combinations, Hopper Trays and Laundry Trays 2

Schedule No. 5. Sinks, Flat Rim Square and Round-cornered, Kitchen, Half-Circle and Flat Rim Sink Combinations ....

Schedule No. 6. Closet Tanks, High and Low Pattern... .....

PRICES.

6. The Licensor agrees that he will employ a commission of six (6) persons, of which he is to be one and to act as Chairman thereof, five of whom shall be designated by a majority of the parties holding Licenses similar to this License, which Commission shall have supervision of all the relations and transactions between the parties hereto under this agreement, but it is understood that where a member of said Commission, or his Company, shall be directly interested in any question of a violation of the License to be decided by the said Commission, said member shall be disqualified and a temporary member shall be appointed in his place by the remaining members of the Commission.

All terms and conditions relative to prices and discounts now established by the Licensor and set forth in the annexed schedules and made a part hereof, shall remain

in force and effect until other terms, conditions and preferential discounts are substituted therefor by the Licensor, which substitution can only be made by him with the approval of a majority of the members of the Commission, hereinbefore prescribed. Notice of such changes and substitutions shall be given from time to time in writing by the Licensor to the Licensees. The Licensee covenants to adhere to and maintain such terms, conditions, regulations and preferential discounts as may be established by the Licensor from time to time, and the Licensee further agrees to sell no "Seconds" or "Bs" covered by Schedules 4, 4½, 5 and 6.

ROYALTY REBATES.

7. If at the end of the fourth month of the first year (said year beginning June 1st, 1910) it shall appear that the Licensee has during the first month complied with all the terms of this agreement, the Licensor shall return the Licensee the following rebate from the royalties paid for said License for said first month's royalties, to wit: 80% of the amount originally paid by the Licensee.

8. At the termination of each succeeding month of the said License, if it shall appear that the Licensee has fully complied with the terms of this agreement during the second preceding month, the Licensor shall make a similar rebate in respect to the royalties paid by the Licensee during the second preceding month.

9. In case of failure on the part of the Licensee to comply in any particular with the terms of this agreement during any month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited as penalty for such violation and shall at once notify the Licensee to that effect.

EXPORT.

10. The restrictions herein contained as to the prices at which Sanitary Enameled Iron Ware is to be sold shall not apply to Sanitary Enameled Iron Ware also and exported to foreign countries. Such sales must be proved bona fide to the Licensor. 1

11. The books of the Licensee shall be open to inspection, at all reasonable times, by the Licensor, by an accountant appointed by the Licensor, not associated in any manner with any of the Licensees or Jobbers. 2

VALIDITY OF PATENTS.

12. The Licensee admits the validity of said several Patents enumerated herein, for the purpose of this agreement and license only, and it is further agreed that upon the termination of this agreement and License for any cause, the Licensee shall not be estopped to deny the validity of the said Patents or any of them. The Licensor agrees that he will, upon the written request of at least three-quarters in number of the Licensees at any time holding licenses similar to 3 this license, use all legal and equitable means to protect the Licensee in the full use and enjoyment of the rights under this agreement and License from all non-licensed parties using any of said machines, processes or devices, or from any sales infringing said patents by customers or any such parties, either by suits or by bringing them under a similar License. If, however, the Licensor refuses to take such action against such non-licensed parties, other customers, or 4 users of such non-licensed goods, for ninety days after being requested so to do, as before provided, this License shall be voidable at the election of the Licensee communicated in writing to the Licensor, and the Licensee thereafter shall be released from all obligations hereunder, and shall not hereafter be estopped to deny the validity of said Patents or any of them.

1 LABELS.

13. No goods manufactured under this License shall be sold unless they bear a registered label (except where otherwise specified) owned by the Licensee and in addition thereto a License tag or label approved by the Licensor, which License tag or label shall be placed in a visible position on all goods made hereunder and sold by the Licensee.

14. This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force

2 for a period of two years from the date hereof, unless previously terminated as herein provided.

15. This agreement, however, may be cancelled by the Licensor by written notice upon repeated breaches by the Licensee of any of the covenants herein contained.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year above written.

3

SCHEDULE OF PATENTS.

Pat. No.	Date	Inventor	Title
633,941	Sept. 26, 1899	James Arrott	Dredger for pulverulent material
949,625	Feb. 15, 1910	E. Ditheridge	Pneumatic Sieve
939,918	Nov. 9, 1909	William Lindsay	Enameling Powder Distributor

4

PETITIONER'S EXHIBIT No. 10.

Filed Oct. 31, 1910.

SAMPLE COPY OF PROPOSED FORM JOBBER'S AGREEMENT.

THIS AGREEMENT, Made this.....day of..... 19.., between the.....a corporation (hereinafter called the Company) and....., State of ....., hereinafter called the (Purchaser);

WITNESSETH: Whereas the Company is licensed under certain United States Letters Patent relating to Sanitary Enameled Ware and processes and apparatus used in the manufacture thereof, which said Letters Patent are enumerated as follows:

SCHEDULE OF PATENTS.

Pat. No.	Date	Inventor	Title.
633,941	Sept. 26, 1899	James Arrott	Dredger for pulverent material
924,491	June 8, 1909	Charles B. Nesbit	Dredger for pulverent material
949,625	Feb. 15, 1910	E. Ditheridge	Pneumatic Sieve
939,918	Nov. 9, 1909	William Lindsay	Enameling Powder Distributor
533,062	Jan. 29, 1895	Herman M. Hoelscher	Flushing Rim Slop Sink
838,702	Dec. 18, 1906	Anthony A. Ficener	Sink attachment
541,068	June 18, 1895	John Clifford and Peter Louis Sutter	Bath Tub, etc.
34,976	Aug. 20, 1901	Almon G. Ward and George E. Day,	Design for a bath tub leg
684,798	Oct. 22, 1901	Almon G. Ward and George E. Day	Bath tub leg
33,465	Oct. 30, 1900	John H. Gavin	Design for a drain board for Sinks
540,235	June 4, 1895	John Clifford and John H. Gavin	Multiple combined wash bowl and slab
645,517	March 13, 1900	Christian A. Sievert	Enameling Table
645,393	March 13, 1900	Edward C. Hoelscher and John Clifford	Enameling Table or Machine
684,888	Oct. 22, 1901	Almon G. Ward	Bath tub leg
942,380	Dec. 7, 1909	Geo. W. Franzheim	Leg fastening
945,457	Jan. 4, 1910	Thomas R. Barnes	Sink Strainer
846,022	March 5, 1907	Thomas R. Barnes	Concealed Hanger

AND WHEREAS, the Purchaser desires to purchase from the Company Sanitary Enameled Ware embodying or made in accordance with said inventions, and to obtain licenses to sell such Ware to others, and the Company is willing to sell Sanitary Enameled Ware to the Purchaser, and to license them for resale on the following terms and conditions:

NOW, THEREFORE:

1. The Company agrees to sell and the Purchaser agrees to buy for a period of time ending June 30th, 1910,..... .....Sanitary Enameled Ware at the following discounts from the prices given in the various Schedules: (Insert Label.)

Schedule	Articles	Discounts from resale prices Established by the Licensor.
1.	5 year guaranteed baths.....	10%
2.	2 year guaranteed baths.....	10%
3.	All other grades of baths.....	5%
4.	Small Ware-Lavatories, etc., and Rolled Rim Sinks.....	10%
5.	Flat Rim Sinks.....	5%
6.	Competitive Lavatories	5%

TERMS: Net 60 days or 2% for cash 10 days.

DELIVERIES.

2. Goods will be sold to the Purchaser, F. O. B. Cars where factory is located, at the prices given in the Resale Sheets for the various zones (subject to the Discounts and Rebates named) with full freight allowed on shipments of 200 pounds and over to the list of cities named in the various zones. To other points than those named, delivery can be made only on the basis of your being charged and paying freight from the nearest city named.

Goods shall be re-sold by the Purchaser at prices established and prevailing in the various zones into which the goods are shipped, regardless of the point of purchase.

Purchaser will be allowed car load prices in any quantity on shipments to the manufacturing and jobbing points specified. On shipments to jobbing points, other than manu-

facturing points, car load or less car load prices will apply according to quantity, as established in the Price Sheets. 1

GENERAL CONDITIONS.

3. Prices or other regulations are effective the morning of the date appearing on the sheet.

4. The ware covered by the Price Sheets shall be invoiced by individual items, and it is not permissible to bill collectively several articles in a "Lump Sum."

5. The various conditions respecting "Guarantee" under which the ware is purchased by the jobber, shall not be varied in the resale to the plumber. 2

6. The restrictions herein contained as to the prices at which Enameled Ware is to be purchased and sold, shall not apply to Enameled Ware sold and exported to Foreign Countries.

REBATES.

7. If your purchases of material, less returned goods, covered by the various Schedules from the following Manufacturers licensed under the patents enumerated hereinbefore:— 3

Blairsville Enameled Ware Co.	Blairsville, Pa.
Barnes Manufacturing Company, The	Mansfield, O.
Cahill Iron Works, The	Chattanooga, Tenn.
Clymer Mfg. Co.	Indiana, Pa.
Colwell Lead Co.	New York
Day-Ward Co., The	Warren, O.
Humphreys Mfg. Co., The	Mansfield, O.
Iron City Sanitary Mfg. Co.	Pittsburgh, Pa.
Kohler Sons Co., J. M.	Sheboygan, Wis.
Mott Iron Works, The J. L.	New York City
McVay & Walker	Braddock, Pa. 4
McCrum-Howell Co.	New York City
National Sanitary Mfg. Co.	Salem, O.
Standard Sanitary Mfg. Co.	Pittsburgh, Pa.
Union Sanitary Mfg. Co.	Noblesville, Ind.
U. S. Sanitary Mfg. Co.	Pittsburgh, Pa.
Wolff Mfg. Co., L.	Chicago, Ill.
Weiskittel & Son, A.	Baltimore, Md.
Wheeling Enameled Iron Co.	Wheeling, W. Va.

have aggregated sums as follows and if all the conditions of this agreement have been complied with, we will pay you rebates set on such purchases as you have made from us, as follows:

$.....5%
.....7½%
.....10%
.....10 and 2½%

Rebates are payable only at the expiration of the period ending June 30th, 1910, and after claims have been approved by E. L. Wayman, Licensor, 1509 Arrott Building, Pittsburgh, Pa.

Written application for rebate must be made at the close of the rebate period to E. L. Wayman, Licensor, upon standard forms, which may be obtained from him for that purpose. Unless claim for rebate is presented within 30 days after the expiration of this agreement, the right to refuse to allow such rebate is reserved by the Licensor named above.

8. The Purchaser understands that the re-sale prices of all ware manufactured under the Letters Patent enumerated herein, as established from time to time by the Company, must be maintained by all Licensed Sanitary Enameled Ware Manufacturers and by all Jobbers and Dealers. The purchaser therefore agrees that he will observe and strictly maintain on all types and classes of ware the selling prices as they are set forth in the schedules, and will observe and strictly adhere to the rules and regulations as embodied in the Price Sheets and furnished as a part of this agreement, or as they may be embodied in the Price Sheets issued hereafter and substituted by or under the authority of the Licensor (E. L. Wayman) in place of those furnished herewith. Articles may be added to or removed from the schedules at any time; but in the event of such removal, the purchases to date of such removal will be considered as part of the amount on which rebate is estimated.

9. The Purchaser also agrees during the life of this contract not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in Sanitary Enameled Ware of any manufacturer not licensed under the Letters Patent enumerated herein, except with the express written permission

of the Licensor. Breach of any of the provisions of this agreement, or any failure to maintain and observe prices, rules or regulations shall give the Company the option immediately to cancel this contract and to withhold all rebates; and the Purchaser is hereby expressly put on notice that in case of any such failure he can thereafter obtain Sanitary Enameled Ware manufactured under the Letters Patent above enumerated only at re-sale prices, without any discount or rebate whatever. 1

10. As an added consideration for this agreement whereby the Purchaser is to be sold goods manufactured under the patents hereinbefore named, the said Purchaser hereby agrees that as to all goods, wares and merchandise, which are manufactured under and in accordance with the patents hereinbefore named, he will only resell such goods now on hand, or already purchased by him, in accordance with the rules, terms, conditions, prices and regulations of sale which are herein established, or which may hereafter be established in accordance with the terms of this agreement, as specially set forth in paragraph 8 hereof. 2

11. This agreement does not become binding on the Company until accepted in writing at the foot hereof by the Sales Manager or his duly authorized representative located in the main sales office of the Company. 3

.....

Accepted this ..... (Purchaser)
day of 19

..... (Company)

By.....

4

1 PETITIONER'S EXHIBIT No. 11.

Filed Oct. 31, 1910.

NOTE.—This contract must be executed by the Purchaser in order to purchase Licensed Sanitary Enameled Iron Ware.

JOBBERS LICENSE AGREEMENT

THIS AGREEMENT, Made this.....day of .....
.....190.., between the.....
a corporation (hereinafter called the Company) and.....
2 .....
State of.....(hereinafter called the Purchaser).

WITNESSETH: Whereas the Company is licensed under certain United States Letters Patent relating to Sanitary Enameled Ware and processes and apparatus used in the manufacture thereof, which said Letters Patent are enumerated as follows:

SCHEDULE OF PATENTS

Pat. No.	Date	Inventor	Title
3 633,941	Sept. 26th, 1899	James Arrott	Dredger for Pulverulent Material.
949,625	Feb. 15th, 1910	E. Ditheridge	Pneumatic Sieve.
939,918	Nov. 9th, 1909	William Lindsay	Enameling Powder Distributor.

AND WHEREAS, the Purchaser desires to purchase from the Company Sanitary Enameled Iron Ware embodying or made in accordance with said inventions, and to obtain licenses to sell such ware to others, and the Company is willing to sell Sanitary Enameled Iron Ware to the Purchaser, and to license it for resale on the following terms and
4 conditions:

NOW, THEREFORE:

1. The Company agrees to sell and the Purchaser agrees to buy for a period of time beginning June 1st, 1910, and ending December 31st, 1910,.....Sanitary Enam-
(Insert label)
eled Iron Ware at the following discounts from the prices given in the various Schedules:

DISCOUNTS AND TERMS

Articles	Discounts from Resale Prices Established by the Licensor. (To be allowed on invoices by the Manufacturer)
Schedule No. 1—5 year Guaranteed Baths, Foot, Pool, Sitz and Child's, and Receptors	7½%
Schedule No. 2—2 year Guaranteed Baths	5 %
Schedule No. 3—All other Grades of Baths	5 %
Schedule No. 4—Small Wares, Drinking Fountains, Lavatories, etc	7½%
Exceptions: Lavatories, similar to Plates (Standard) P-558, 559, 561 and 562	5 %
Schedule No. 4½—Roll Rim Sinks and Combinations, Slop Sinks, Sink Backs and Ends, Drain Boards, Factory and Wash Sinks, Sink and Tray Combinations, Laundry Trays, Closet Bowls and Urinals	5 %
Schedule No. 5—Flat Rim Sinks and Combinations, Square and Round Corner Kitchen, Half Circle, Corner, Slop Sinks, Slop Hoppers, Wash Bowls, Trap Standards and Grease Traps	5 %
Schedule No. 6—Tanks, Closet and Urinal, High and Low Pattern	5 %

TERMS: Net 60 days or 2% for cash 10th of month following shipment.

DELIVERIES

2. Goods will be sold to the Purchaser, F. O. B. Cars where factory is located, at the prices given in the Resale Sheets for the various zones (subject to the Discounts and Rebates named) with full freight allowed on shipments of

1 Union Sanitary Mfg. Co.....Noblesville, Ind.
United States Sanitary Mfg. Co.....Pittsburgh, Pa.
Wolff Mfg. Co., L.....Chicago, Ill.
Weiskittel & Son Co., A.....Baltimore, Md.
Wheeling Enameled Iron Co.....Wheeling, W. Va.

have aggregated sums as follows and if all the conditions of this agreement have been complied with, the Company will pay the Purchaser rebates on such purchases as they have made from the Company during the period ending December 31st, 1910, as follows,

2
$10,000	2½%
$15,000	3 %
$20,000	3½%
$25,000	4 %
$30,000	5 %

Rebates are payable only at the expiration of the period ending December 31st, 1910, and after claims have been approved by E. L. Wayman, Licensor, Arrott Building, Pittsburgh, Pa.

Written application for rebate must be made at the close of the rebate period to E. L. Wayman, Licensor, upon
3 standard forms, which may be obtained from him for that purpose. Unless claim for rebate is presented within 30 days after the expiration of this agreement, the right to refuse to allow such rebate is reserved by the Licensor named above.

If at the expiration of this contract, a similar contract is made between the parties hereto and the purchases under each contract are sufficiently large so that the aggregate of the purchases under both contracts are double the amounts named above, then the Compaany will pay the percentage rebate named above on the entire amount of such purchases
4 under both contracts, but it shall not be permissible to aggregate purchases made under more than two successive contracts to obtain any greater rebate than may be payable under the last of such two successive contracts.

9. The Purchaser understands that the re-sale prices of all ware manufactured under the Letters Patent enumerated herein, as established from time to time by the Company, must be maintained by all Licensed Sanitary Enameled Iron Ware Manufacturers and by all Jobbers and Dealers and

that sales by one Jobber to another cannot be made at any 1
better prices than established in the sheets. The Purchaser therefore agrees that he will observe and strictly maintain on all types and classes of ware the selling prices as they are set forth in the schedules, and will observe and strictly adhere to the rules and regulations as embodied in the Price Sheets and furnished as a part of this agreement, or as they may be embodied in the Price Sheets issued hereafter and substituted by or under the authority of the Licensor (E. L. Wayman) in place of those furnished herewith. Articles may be added to or removed from the schedules at any time; but in the event of such removal, the purchases to date of 2
such removal will be considered as part of the amount on which rebate is estimated.

10. The Purchaser also agrees during the life of this contract not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in Sanitary Enameled Iron Ware of any manufacturer not licensed under the Letters Patent enumerated herein, except with the express written permission of the Licensor. Breach of any of the provisions of this agreement, or any failure to maintain and observe prices, rules or regulations shall give the Company, or E. L. Way- 3
man, owner of the Patents hereinbefore enumerated, an option immediately to cancel this contract, all unfilled orders and to withhold all rebates; and the Purchaser is hereby expressly put on notice that in case of any such failure, he can not thereafter obtain Sanitary Enameled Iron Ware manufactured under the Letters Patent above enumerated from any of the Licensed Manufacturers.

11. As an added consideration for this agreement whereby the Purchaser is to be sold goods manufactured under the patents hereinbefore named, the Purchaser hereby agrees that as to all goods, wares and merchandise, which are man- 4
ufactured under and in accordance with the patents hereinbefore named, the Purchaser will only resell such goods now on hand, or already purchased by him, irrespective of by whom such goods have been manufactured, in accordance with the rules, terms, conditions, prices and regulations of sale which are herein established, or which may hereafter be established in accordance with the terms of this agreement, as specially set forth in paragraph 9 hereof.

12. This agreement does not become binding on the Company until accepted in writing at the foot hereof by the Sales Manager or his duly authorized representative located in the main sales office of the Company

.....

Accepted this.....

day of.....19...

.....(Purchaser)

.....(Company)

By.....

This statement must be signed by both Manufacturer and Jobber, detached and filed promptly with E. L. Wayman, Arrott Building, Pittsburgh, Pa.

Dated.....191..

E. L. WAYMAN, *Licensor,*
Arrott Building,
Pittsburgh, Pa.

This is to certify that a "Jobber's License Agreement" Purchase Contract has been executed between

..... (Manufacturer)

and ..... (Jobber)

(City and State).....

at the following Discounts (subject to the established rebates) from the Resale Prices established by you or that may be established by you during the period ending December 31st, 1910.

DISCOUNTS 1

Schedule No. 1 —5 year Guaranteed Bath, Foot, Pool, Sitz and Child's and Receptors ....

Schedule No. 2 —2 year Guaranteed Baths..... .....

Schedule No. 3 —All other Grades of Baths.... .....

Schedule No. 4 —Small Wares, Drinking Fountains, Lavatories, etc..... .....
Exceptions: Lavatories, similar to Plates (Standard) P-558, 559, 561 and 562..... 2

Schedule No. 4½—Roll Rim Sinks and Combinations, Slop Sinks, Sink Backs and Ends, Drain Boards, Factory and Wash Sinks, Sink and Tray Combinations, Laundry Trays, Closet Bowls and Urinals ....

Schedule No. 5 —Flat Rim Sinks and Combinations, Square and Round Corner Kitchen, Half Circle, Corner, Slop Sinks, Slop Hoppers, Wash Bowls, Trap Standards and Grease Traps..... 3

Schedule No. 6—Tanks, Closet and Urinal, High and Low Pattern..... .....

Signed:

..... (Manufacturer)

By 4

..... (Jobber)

By .....

1 PETITIONER'S EXHIBIT No. 12.

Filed Oct. 31, 1910.

Feb. 7, 1910.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:

Referring to the informal discussion that took place after the Regular Meeting regarding Resale Prices and
2 License Arrangement.

Have you any patents that you would be willing to assign along with those owned by the other Companies, for the purpose of this arrangement? If such is the case will you kindly send me the following information as quickly as possible.

Schedule of Patents.

Pat. Number	*Date.*	*Inventor*	*Title.*

Applications—not issued

3 *Docket Number*	*Serial Number*	*Title*

In order to get a preliminary statement of each Manufacturer's ideas, will you kindly write me regarding the following:

1. Using the Standard Sanitary Mfg. Co.'s published prices as a basis, what differential, if any, do you believe your Company would require in order to obtain its fair share of the business?

Preferential Discount

4 Schedule 1. First Grade 5 year Guaranteed Baths
" 2. All other Grades of Baths.
" 3. Small Ware—Lavatories, etc.
(Note: On what competitive types of lavatories do you feel you could get the same price as the Standard.)
" 4. Sinks—F.R. and R.R.

2. How many active furnaces do you anticipate operating the balance of the year? This information is necessary in order to figure out the total amount of royalty.

Thanking you in advance for this information as promptly as possible, I am,

E. L. WAYMAN.

1 **PETITIONER'S EXHIBITS Nos. 13 to 28.**

Petitioner's Exhibits Nos. 13 to 28 are the sixteen license agreements entered into with Edwin L. Wayman by the corporation defendants.

Thirteen of the corporation defendants entered into these agreements on May 6, 1910, to wit:

	Exhibit No.
The Barnes Manufacturing Co.....	13,
The Day-Ward Company.....	16,
The Humphreys Manufacturing Co.....	17,
Kerner Manufacturing Co.....	18,
2 McVay & Walker.....	20,
The McCrum-Howell Co.....	21,
The National Sanitary Manufacturing Co.	22,
Standard Sanitary Manufacturing Co..	23,
Union Sanitary Mfg. Co.....	24
U. S. Sanitary Mfg. Co.....	25
A. Weiskittel & Son Co.....	26
Wheeling Enameled Iron Co.....	27
L. Wolff Mfg. Co.....	28

3 The other three entered into the agreements on the following dates:

	Exhibit No.
The J. L. Mott Iron Works, May 5, 1910..	19
Colwell Lead Co., May 25, 1910.....	14
The Cahill Iron Works, July 6, 1910....	15

These sixteen agreements are not copied in the record for the reason that each of them is identical with Petitioner's Exhibit No. 9 (*supra*, p. 20), except for certain preferential discounts which are written into paragraph 5 of the license agreement. These discounts are the preferential discounts 4 which were allowed to the smaller concerns. Where no preferential discounts are allowed the word "none" appears under the column headed "discounts."

The preferential discounts shown on these several exhibits are as follows:

1. The Barnes Mfg. Co.	Exhibit	13			None	1
2. Colwell Lead Co.	"	14	Schedule	1	5%	
			"	2	2½%	
			"	3	None	
			"	4	2½%	
				Exceptions	None	
			"	4½	2½%	
			"	5	None	
			"	6	None	
3. The Cahill Iron Works	"	15			None	
4. The Day Ward Co.	"	16	"	1	5%	
			"	2	None	
			"	3	None	
			"	4	2½%	2
				Exceptions	None	
			"	4½	2½%	
			"	5	None	
			"	6	None	
5. The Humphryes Mfg. Co.	"	17	"	1	5%	
			"	2	2½%	
			"	3	None	
			"	4	2½%	
				Exceptions	None	
			"	4½	2½%	
			"	5	None	
			"	6	None	
6. Kerner Mfg. Co.	"	18	"	1	5%	
			"	2	2½%	3
			"	3	None	
			"	4	5%	
				Exceptions	2½%	
			"	4½	5%	
			"	5	None	
			"	6	None	
7. J. L. Mott Iron Works	"	19			None	
8. McVay & Walker	"	20	"	1	5%	
			"	2	2½%	
			"	3	None	
			"	4	5%	
				Exceptions	2½%	
			"	4½	5%	4
			"	5	2½%	
			"	6	2½%	
9. The McCrum-Howell Co.	"	21	"	1	5%	
			"	2	2½%	
			"	3	None	
			"	4	5%	
				Exceptions	None	
			"	4½	2½%	
			"	5	None	
			"	6	None	

10. The Nat'l. Sanitary Mfg. Co.	Exhibit	22	Schedule	1		5%
			"	2		2½%
			"	3		None
			"	4		2½%
				Exceptions		None
			"	4½		2½%
			"	5		None
			"	6		None
11. Standard Sanitary Mfg. Co.	"	23				None
12. Union Sanitary Mfg. Co.	"	24	"	1		5%
			"	2		None
			"	3		None
			"	4		2½%
				Exceptions		None
			"	4½		2½%
			"	5		None
			"	6		None
13. U. S. Sanitary Mfg. Co.	"	25				None
14. A. Weiskittel & Son Co.	"	26	"	1		5%
			"	2		2½%
			"	3		None
			"	4		2½%
				Exceptions		None
			"	4½		2½%
			"	5		None
			"	6		None
15. Wheeling Enameled Iron Co.	"	27	"	1		5%
			"	2		2½%
			"	3		None
			"	4		2½%
				Exceptions		None
			"	4½		2½%
			"	5		None
			"	6		None
16. L. Wolff Manufacturing Co.	"	28				None.

Each of the agreements is signed by Edwin L. Wayman and also as follows:

Exhibit 13. "The Barnes Mfg. Co.,
by T. R. Barnes, Scty. & Gen. Mgr."

Exhibit 14. "Colwell Lead Co.,
by J. T. Duryea, President."

Exhibit 14. "The Cahill Iron Works,
by Frank H. Caldwell, Prest."

Exhibit 16. "The Day Ward Co.,
by A. G. Ward, V. P."

Exhibit 17. "The Humphryes Mfg. Co.
by Reid Carpenter, Sec. & Treas."

Exhibit 18. "Kerner Mfg. Co.,
A. M. Frauenheim, Treas."

Exhibit 19. "The J. L. Mott Iron Works,
Max Goebel, Secretary."

Exhibit 20. "McVay & Walker,
per A. C. Walker."

Exhibit 21. "The McCrum-Howell Co.,
by Howard T. Gates, Secretary."

Exhibit 22. "National Sanitary Mfg. Co.
F. G. Borden, Pres."

Exhibit 23. "Standard Sanitary Manfg. Co.
By Theo. Ahrens, President."

Exhibit 24. "Union Sanitary Mfg. Co.,
By L. C. Huesmann, Pres."

Exhibit 25. "United States Sanitary Mfg. Co.
By C. H. Arrott, prest.
A. H. Cline, Jr., Sec'y."

Exhibit 26. "A. Weiskittel & Son Co.,
Anton Weiskittel, Pres."

Exhibit 27. "Wheeling Enameled Iron Co.
By J. E. Wright, Prest."

Exhibit 28. "L. Wolff Mfg. Co.
H. M. Hoelscher, Sec'y."

1 PETITIONER'S EXHIBIT No. 29.

Filed Nov. 1, 1910.

IN THE UNITED STATES CIRCUIT COURT

DISTRICT OF MARYLAND.

No.

UNITED STATES OF AMERICA, PETITIONER,

2 *vs.*

STANDARD SANITARY MANUFACTURING COMPANY AND OTHERS, DEFENDANTS.

Statements and Admissions of Defendants.

In order to expedite the hearing of this cause, we assent and agree that as against us respectively for the purposes of this cause only and to no other purpose, but subject to objections for irrelevancy, the statements and admissions
3 hereinafter contained may be taken and deemed true, and that this statement shall be made a part of the record.

WE ADMIT:

1. As to the allegations of Division 1, that the several corporation defendants are incorporated under the laws of the several states of the United States as stated in said Division 1, and with principal offices located at the places stated therein, except that The Humphryes Manufacturing Company's name is wrongly spelled.

4 2. The individual defendants are respectively officers of the several corporations defendant as follows:

Theodore Ahrens, Francis J. Torrance, E. L. Dawes, and W. A. Myler are president, first vice-president, second vice-president, and treasurer, respectively, of the Standard Sanitary Manufacturing Company.

Anton Weiskittei and John D. Heise are president and secretary, respectively, of A. Weiskittel & Son Company, and reside in the City of Baltmore, Maryland.

C. H. Voegele and T. R. Barnes are, respectively, presi-

dent and secretary of The Barnes Manufacturing Company. 1

F. H. Caldwell and J. J. Mahoney are, respectively president and vice-president of The Cahill Iron Works.

Jesse T. Duryea and Bert O. Tilden are, respectively, president and secretary of the Colwell Lead Company.

W. C. Winfield and A. G. Ward are, respectively, president and vice-president of the Day-Ward Company.

S. N. Ford and Reid Carpenter are, respectively, president and secretary of The Humphryes Manufacturing Company.

J. A. Frauenheim is president of the Kerner Manufacturing Company.

Jordan L. Mott and Max Goebel are, respectively, president and secretary of The J. L. Mott Iron Works. 2

Thomas Walker and Alexander C. Walker are, respectively, president and director of McVay & Walker.

Lloyd G. McCrum and Howard T. Gates are, respectively, president and secretary of The McCrum-Howell Company.

Frank G. Borden and D. W. Davis are, respectively, president and secretary of The National Sanitary Manufacturing Company.

L. C. Huesman and E. V. Brigham are, respectively, president and secretary of the Union Sanitary Manufacturing Company. 3

Charles F. Arrott and A. H. Cline, Jr. are, respectively, president and secretary of the United States Sanitary Manufacturing Company.

Ludwig Wolff and Herman M. Hoelscher are, respectively, president and secretary of the L. Wolff Manufacturing Company.

J. E. Wright and George W. Franzheim are, respectively, president and secretary of the Wheeling Enameled Iron Company.

Edwin L. Wayman is a resident of Pittsburg, with offices in the Arrott Building in that city. 4

3. All the defendants have been and now are engaged in the manufacture of sanitary enameled iron ware, such as bath tubs, wash bowls, lavatories, drinking fountains, etc., at their several factories, located respectively as follows:

Standard Sanitary Manufacturing Company, at Allegheny and New Brighton, Pa., and Louisville, Ky.

A. Weiskittel & Con Company, at Baltimore, Md.
The Barnes Manufacturing Company, at Mansfield, Ohio.
The Cahill Iron Works, at Chattanooga, Tenn.
Colwell Lead Company, at Elizabeth, N. J.
The Day-Ward Company, at Warren, Ohio.
The Humphryes Manufacturing Company, at Mansfield, Ohio.
Kerner Manufacturing Company, at Zelienople, Pa.
The J. L. Mott Iron Works, at Trenton, N. J.
McVay & Walker, at Braddock, Pa.
The McCrum-Howell Company, at Uniontown, Pa., and Norwich, Conn.
The National Sanitary Manufacturing Company, at Salem, Ohio.
Union Sanitary Manufacturing Company, at Noblesville, Indiana.
United States Sanitary Manufacturing Company, at Monaca, Pa.
L. Wolff Manufacturing Company, at Chicago, Ill.
Wheeling Enameled Iron Company, at Wheeling, W. Va.

CARROLL L. BOND
Noble, Jackson & Hubbard,
Solicitors for and of
counsel with defendants.

PETITIONER'S EXHIBIT No. 30. 1

Filed Nov. 1, 1910.

LIST OF JOBBERS
of
PLUMBING SUPPLIES
in the United States.

July, 1910.

Detroy all previous lists. 2

NATIONAL TRADE RESOLUTIONS.

RESOLVED, that the following expresses the opinion of this Association as to the proper definitions of manufacturers and jobbers of plumbing supplies and master plumbers.

Definition of a Manufacturer.

Any person, firm or corporation manufacturing supplies in the plumbing line of merchantable quality, or who purchases plumbing supplies and uses the same for the finishing of his product and who sells his product only through regular trade channels. 3

Definition of a Jobber.

Any person, firm or corporation dealing in plumbing supplies who continuously carries on stock a general assortment thereof (such as brass work, earthenware, enamel tubs and lavatories, lead pipe, traps and bends, range boilers, sinks, soil pipe and fittings, tanks, seats, etc.) of sufficient quantity to answer all ordinary requirements of the trade in his locality, and to enable him to fill from stock all reasonable orders; who does no contract work in said line, either directly or indirectly, and who sells goods only through regular trade channels. 4

Definition of a Master Plumber.

Any person, firm or corporation who represents the industry of plumbing; who does a merchant and contract business with the public generally; who is qualified under

and complies with the state laws and municipal ordinances respecting plumbing and plumbers where such exist, or where no licenses are required who fulfils the other requirements hereof; and in addition governmental agencies, water works, railroads, steamship companies, ship building companies, car building companies, packing and stockyard companies, educational and charitable institutions and manufacturing companies, provided they regularly employ journeymen plumbers continuously to install the same, and purchase plumbing supplies for their own use only.

Information.

There shall be furnished information to members as to the responsibility and business standing of persons, firms and corporations with whom the members are likely to deal.

The object of these resolutions is not to restrict trade within the membership of this association, or to limit the persons, firms or corporations to whom the members hereof may sell, or with whom they may deal, whether they be members of this association or not, but such object is to advise and inform the members of this association of the classification and standing of those with whom they are likely to deal, in order that each may decide for himself the terms and conditions upon which he will sell or buy goods.

LIST OF JOBBERS

of

PLUMBING SUPPLIES IN THE UNITED STATES.

√Crane Co., Birmingham, Alabama.
√Jefferson Plumbing and Mill Supply Co., Birmingham, Alabama.
√Crane Co., Little Rock, Arkansas.
√Boynton Co., H. R., Los Angeles, California.
√Busch Co., A. H., Los Angeles, California.
√Crane Co., Los Angeles, California.
√Harper & McReynolds Co., Los Angeles, California.
√Holbrook, Merrill & Stetson, Los Angeles, California.
√Montague, W. W., & Co., Los Angeles, California.
√Nelson Mfg. Co., N. O., Los Angeles, California.
√Tay Co. of Los Angeles, The, Los Angeles, California.
√Burns & Howard Co., Oakland, California.

√Crane Co., Oakland, California. 1
√Kinney Co., R. W., Oakland, California.
√Miller-Enwright Co., Sacramento, California.
√Western Metal Supply Company, San Diego, California.
√California Plumbing Supply Co., San Francisco, California.
√Crane Co., San Francisco, California.
√Dalziel-Moller Co., San Francisco, California.
√Haines, Jones & Cadbury Co., San Francisco, California.
√Holbrook, Merrill & Stetson, San Francisco, California.
√Kinney Co., San Francisco, California.
√Lally Co., San Francisco, California.
√Montague, W. W., & Co., San Francisco, California. 2
√Nelson Mfg. Co., N. O., San Francisco, California.
√Tay Co., Geo. H., San Francisco, California.
√Atkins McGee Supply Co., Denver, Colorado.
Denver Pump & Plumbing Co., Denver, Colorado.
√O'Fallon Supply Co., The M. J., Denver, Colorado.
√Morse Bros. Machinery & Supply Co., Denver, Colorado.
√Wolff Mfg. Co., L., Denver, Colorado.
√Nelson Mfg. Co., N. O., Pueblo, Colorado.
√Bridgeport Plumbing Supply Co., Bridgeport, Connecticut.
√Plimpton & Hills Corporation, The, Hartford, Connecticut.
√Mersick, C. S., & Co., The, New Haven, Connecticut.
√Peck Bros. & Co., The, New Haven, Connecticut. 3
√Delaware Electric & Supply Co., Wilmington, Delaware.
√Speakman Supply & Pipe Co., Wilmington, Delaware.
√Crane Co., Washington, District of Columbia.
√McCubbin Co., The C. J., Washington, District of Columbia.
√Mitchell, John, Jr., Washington, District of Columbia.
√Schafer, E. G. & Co., Washington, District of Columbia.
√Somerville Co., Thomas, Washington, District of Columbia.
√Hubbard Company, The S. B., Jacksonville, Florida.
√Crane Co., Atlanta, Georgia.
√General Supply Co., Atlanta, Georgia. 4
√Lowry Co., The, Atlanta, Georgia.
√Haines, Jones & Cadbury Co., Savannah, Georgia.
√McKenna, J. H., Savannah, Georgia.
√Cameron-Schroth-Cameron Co., Chicago, Illinois.
√Clow & Sons, Jas. B., Chicago, Illinois.
√Crane Co., Chicago, Illinois.
√Davies Supply Co., The, Chicago, Illinois.
√Deschauer, S., Chicago, Illinois.

1 √Federal Huber Co., Chicago, Illinois.
Geary, Andrew J., Chicago, Illinois.
√Gollner, Philip, Chicago, Illinois.
√Henion & Hubbell, Chicago, Illinois.
√Illinois Malleable Iron Co., Chicago, Illinois.
√Kellogg-Mackay Co., Chicago, Illinois.
√National Plumbing & Heating Supply Co., Chicago, Illinois.
√Quinn Supply Co., Chicago, Illinois.
√Republic Mfg. Co., Chicago, Illinois.
√Weil Bros., Chicago, Illinois.
√Weir & Craig Mfg. Co., Chicago, Illinois.
2 √Western Plumbing Supply Co., Chicago, Illinois.
√Whitney & Ford, Chicago, Illinois.
√Wolff Mfg. Co., L., Chicago, Illinois.
√Field & Shorb Co., The, Decatur, Illinois.
Kinsey & Mahler Co., Peoria, Illinois.
√Rockford Brass Works, Rockford, Illinois.
√May Supply Co., Anderson, Indiana.
√P. & H. Supply Co., Fort Wayne, Indiana.
√Central Supply Co., Indianapolis, Indiana.
√Indiana Supply Co., Indianapolis, Indiana.
√Crane Co., Indianapolis, Indiana.
√Crane Co., Muncie, Indiana.
3 √Keiser, Geo., & Co., Muncie, Indiana.
√Crane Co., Terre Haute, Indiana.
√Knapp Supply Co., The, Union City, Indiana.
√Cedar Rapids Pump Co., Cedar Rapids, Iowa.
Chandler Pump Co., Cedar Rapids, Iowa.
√Midland Plumbing Supply Co., Davenport, Iowa.
√Crane Co., Des Moines, Iowa.
√Kurtz Co., L. H., Des Moines, Iowa.
√Kretschmer Manufacturing Co., Dubuque, Iowa.
McDonald & Morrison Mfg. Co., A. Y., Dubuque, Iowa.
√Leighton Supply Co., Fort Dodge, Iowa.
4 √Crane Co., Sioux City, Iowa.
√Crane Co., Witchita, Kansas.
√Ahrens & Ott Mfg. Co., The, Louisville, Kentucky.
√Laib Co., Louisville, Kentucky.
√Vogel & Son, P. A., Louisville, Kentucky.
√Ahrens & Ott Mfg. Co., The, New Orleans, Louisiana.
Fairbanks Co., The, New Orleans, Louisiana.
√Manion & Co., New Orleans, Louisiana.
√Dunning & Co., R. B., Bangor, Maine.

√Blake, W. L., & Co., Portland, Maine. 1
√Smith & Abbott Co., The, Portland, Maine.
√Adt., John B., Baltimore, Maryland.
√Central Metal & Supply Co., Baltimore, Maryland.
√Crane Co., Baltimore, Maryland.
√Crook-Horner Co., Baltimore, Maryland.
√Cuyler & Mohler, Baltimore, Maryland.
√Krauss & Roberts, Baltimore, Maryland.
√Regester Supply Co., The Baltimore, Maryland.
√Robertson Mfg. Co., The James, Baltimore, Maryland.
√Southern Supply Co., Baltimore, Maryland.
√Maryland Supply Company, Cumberland, Maryland. 2
√Barrett Mfg. Co., Jas., Boston, Massachusetts.
√Braman, Dow & Co., Boston, Massachusetts.
√Brown-Wales Co., Boston, Massachusetts.
√Butler & Co., E. F., Boston, Massachusetts.
√Crane Co., Boston, Massachusetts.
√Dalton-Ingersoll Mfg. Co., Boston, Massachusetts.
√Dececo Co., The, Boston, Massachusetts.
√Estabrook's Sons, R., Boston, Massachusetts.
√Gallison Co., The Wm. H., Boston, Massachusetts.
√Gilchrist Co., Geo. E., Boston, Massachusetts.
√Hercules Iron & Supply Co., Boston, Massachusetts.
√Hubbard & Sons, W. B., Boston, Massachusetts. 3
√Locke, Stevens & Co., Boston, Massachusetts.
√Sanitary Fixtures Co., The, Boston, Massachusetts.
√Smith & Anthony Co., Boston, Massachusetts.
√Sumner & Gerald, Boston, Massachusetts.
√Thompson-Durkee Co., Boston, Massachusetts.
Webb Mfg. Co., F. W., Boston, Massachusetts.
√Young, Joseph H., Boston, Massachusetts.
Cambridge Plumbing Supply Co., Cambridgeport, Massachusetts.
√Bourneuf Corporation, Louis, Lynn, Massachusetts.
√New Bedford Boiler & Machine Co., New Bedford, Massachusetts. 4
√Ideal Supply Co., Somerville, Massachusetts.
√Hitchcook Supply Co., The, Springfield, Massachusetts.
New England Plumbing Supply Co., Springfield, Massachusetts.
Baker Lead Mfg. Co., Worcester, Massachusetts.
√Colwell Lead Co., Worcester, Massachusetts.
√Detroit Lead Pipe & Sheet Lead Works, Detroit, Michigan.

1 √ Harvey's Sons Mfg. Co., Ltd., A., Detroit, Michigan.
√ Kimball-Eisenberg Co., Detroit, Michigan.
√ Park & McKay Co., The, Detroit, Michigan.
√ Sales Co., Murray W., Detroit, Michigan.
√ Walker Mfg. & Supply Co., Detroit, Michigan.
√ Federal Huber Co., Grand Rapids, Michigan.
√ Ferguson Supply Co., Ltd., Grand Rapids, Michigan.
Grand Rapids Supply Co., Grand Rapids, Michigan.
√ Quinn Manufacturing Co., Kalamazoo, Michigan.
√ Michigan Supply Co., Lansing, Michigan.
Emerson-Corbin Supply Co., Menominee, Michigan.
2 √ Crane & Ordway Co., The, Duluth, Minnesota.
Duluth Plumbing Supplies Co., Duluth, Minnesota.
√ Central Supply Co., Minneapolis, Minnesota.
√ Kellogg-Mackay-Cameron Co., Minneapolis, Minnesota.
√ National Manufacturing & Supply Co., Minneapolis, Minnesota.
√ Crane Co., Minneapolis, Minnesota.
Gilmore Co., D. M., Minneapolis, Minnesota.
√ Reid Supply Co., Minneapolis, Minnesota.
√ Crane & Ordway Co., The, St. Paul, Minnesota.
Western Supply Co., The, St. Paul, Minnesota.
√ Crane Co., Kansas City, Missouri.
3 √ Kansas City Pump Co., The, Kansas City, Missouri.
√ Reeves Supply Co., Kansas City, Missouri.
√ Southwest Plumbing Supply Co., Kansas City, Missouri.
√ U. S. Water & Steam Supply Co., Kansas City, Missouri.
√ Young Supply Co., W. B., Kansas City, Missouri.
√ Horigan Supply Co., St. Joseph, Missouri.
√ Cahill-Swift Mfg. Co., St. Louis, Missouri.
√ Crane Co., St. Louis, Missouri.
√ Monument Plumbing Supply Co., St. Louis, Missouri.
√ National Plumbing Supply Co., St. Louis, Missouri.
√ Nelson Mfg. Co., N. O., St. Louis, Missouri.
4 √ Rumsey Mfg. Co., L. M., St. Louis, Missouri.
√ Cooper, Jr., H., Springfield, Missouri.
√ Missoula Mercantile Co., Missoula, Montana.
√ Cooper & Cole Bros., Lincoln, Nebraska.
√ Western Supply Co., Lincoln, Nebraska.
√ Crane Co., Omaha, Nebraska.
√ United States Supply Co., Omaha, Nebraska.
√ Manchester Supply Co., Manchester, New Hampshire.
Bayonne Supply Co., Bayonne, New Jersey.

√Fullmer, A. J., Camden, New Jersey. 1
Ronalds & Johnson Co., Camden, New Jersey.
√Orange Supply Co., East Orange, New Jersey.
√Elizabeth Hardware Co., Elizabeth, New Jersey.
√Herrmann, F. W., Guttenberg, New Jersey.
√Jersey City Supply Co., Jersey City, New Jersey.
√Perkins Co., Arthur L., Jersey City, New Jersey.
√Egbert W. V. & Co., Newark, New Jersey.
√Gray, R., jr., Newark, New Jersey.
√Macknet & Doremus Co., Newark, New Jersey.
√Newark Supply Co., Newark, New Jersey.
√Roe, Wm. S., Newark, New Jersey.
√Roe & Conover, Newark, New Jersey. 2
√Wulack, Benjamin, Newark, New Jersey.
√McNab & Harlin Mfg. Co., Paterson, New Jersey.
√Warren, Balderstone & Co., Trenton, New Jersey.
√Berger & Bro., Edward W., Weehawken, New Jersey.
√Hoy & Co., Albany, New York.
American Plumbing Mfg. Co., Brooklyn, New York.
√Atlantic Supply Co., Brooklyn, New York.
√Burr Mfg. & Supply Co., Brooklyn, New York.
Clark, John F., Brooklyn, New York.
√DeLaney, Thos. M., Brooklyn, New York.
√Jaobs, Geo. P., & Co., Brooklyn, New York. 3
√Knight, Thomas G. Co., Brooklyn, New York.
√McElraevy & Hauck Co., Brooklyn, New York.
√Read Lead Works, H. P., Brooklyn, New York.
Ronalds & Johnson Co., Brooklyn, New York.
√Sackin, B., Brooklyn, New York.
√Smyth-Donegan Co., Brooklyn, New York.
√Spencer & Haviland, Brooklyn, New York.
√Saltser & Weinsier, Brooklyn, New York.
√Irving D., Booth, Elmira, New York.
√Case, W. A., & Son Mfg. Co., Buffalo, New York.
√Dixon & Ballou, Buffalo, New York. 4
Frontier & Steam Supply Co., Buffalo, New York.
√Hamill Co., D. L., Buffalo, New York.
√Plumbers' & Steamfitters' Supply Co., Buffalo, New York.
√Schaefer & Co., Buffalo, New York.
√Warren & Dillward Co., Buffalo, New York.
√Zander Plumbing Supply Co., Buffalo, New York.
√Dimock & Fink Co., New Rochelle, New York.
√Adee Co., Fred, New York City, New York.

1 √Beals, H. H., New York City, New York.
√Behrer & Co., New York City, New York.
√Bronx Supply Co., New York City, New York.
√Behrer & Sons, Arnold, New York City, New York.
√Beith & Reilly Co., New York City, New York.
√Billo, Geo. H., New York City, New York.
√Campbell Supply Co., New York City, New York.
Central Plumbers Supply Co., New York City, New York.
√Colwell Lead Co., New York City, New York.
√Cushing Co., Thos. F., New York City, New York.
√Dimock & Fink Co., New York City, New York.
2 DuBois & Co., F. N., New York City, New York.
√Federal Huber Co., New York City, New York.
√Glauber, Sam. S. (Inc.), New York City, New York.
√Harlem Supply Co., The, New York City, New York.
√Hotchkiss, Vail & Garrison Co., New York City, New York.
√Hussey & Son, W. H., New York City, New York.
√Keating, Co., E. F., New York City, New York.
√Kenny Mfg. Co., New York City, New York.
√Klenert & Rosenbulth, New York City, New York.
Lederman, Saml., New York City, New York.
√Locke & Smith Co., New York City, New York.
√McShane Co., Wm., New York City, New York.
3 √Malbin, Mayer, New York City, New York.
Mayor, Lane & Co., New York City, New York.
√Meyer-Sniffen Co., The, New York City, New York.
√Mott Iron Works, The J. L., New York City, New York.
Murray, John A., New York City, New York.
√Nason Mfg. Co., New York City, New York.
√Peck Bros. & Co., The, New York City, New York.
√Pierce, Butler & Pierce Mfg. Co., New York City, New York.
√Read Lead Works, H. P., New York City, New York.
Ronalds & Johnson Co., New York City, New York.
√Simmons Co., John, New York City, New York.
4 Smolka & Co., Edw., New York City, New York.
√Standard Plumbing Supply Co., New York City, New York.
√United Plumbers' Supply Co., New York City, New York.
√Vogel, Ignatz, New York City, New York.
√Walsh & Hartwig (Inc.), New York City, New York.
√Hunting Co., The, Rochester, New York.
√Sloan, Samuel, & Co., Rochester, New York.
√Foley, James F., Syracuse, New York.
√McClure Co., The, R. C., Syracuse, New York.

√Pierce, Butler & Pierce Mfg. Co., Syracuse, New York. 1
√Aird-Don Co., Troy, New York.
√Millar, Charles, & Son, Utica, New York.
√Hunting Co., The, Watertown, New York.
√Weekes & Son Co., John, Watertown, New York.
√Yonkers Plumbing Supply Co., Yonkers, New York.
√Crane & Ordway Co., The, Fargo, North Dakota.
√Allman Co., W. H., Canton, Ohio.
√Crane-Hawley Co., Cincinnati, Ohio.
√Merkel Bros., Cincinnati, Ohio.
√Merrie, Hugh, Cincinnati, Ohio.
√McDonald, James, & Son, Cincinnati, Ohio. 2
√Murdock Mfg. & Supply Co., Cincinnati, Ohio.
√Cleveland Plumbing Supply Co., Cleveland, Ohio.
√Fisher Co., The E. W., Cleveland, Ohio.
√Kennedy Co., The, Cleveland, Ohio.
√Sanitary Co., The, Cleveland, Ohio.
√Standard Mfg. Co., Cleveland, Ohio.
√Welker Supply Co., Cleveland, Ohio.
√Ascher Supply Co., The, Columbus, Ohio.
Columbus Brass Co., The, Columbus, Ohio.
√Columbus Supply Co., Columbus, Ohio.
√Westwater Supply Co., The, Columbus, Ohio.
√Potts, Ben D., Columbus, Ohio. 3
√Sioto Valley Supply Co., Columbus, Ohio.
√Dayton Supply Co., Dayton, Ohio.
√Ross Supply Co., Greenville, Ohio.
√Sanitary Supply Co., Hamilton, Ohio.
√Hughes Supply Co., Mansfield, Ohio.
American Plumbers' Supply Co., The, Toledo, Ohio.
Grosswiller, Jos. F., Supply Co., Toledo, Ohio.
√National Supply Co., The, Toledo, Ohio.
Ohio Plumbers' Supply Co., Toledo, Ohio.
√Crane Co., Oklahoma City, Oklahoma.
Atlas Supply Co., Muskogee, Oklahoma. 4
√Crane Co., Muskogee, Oklahoma.
√Crane Co., Portland, Oregon.
√Gauld Co., The, Portland, Oregon.
√Kline, M. L., Portland, Oregon.
√Standard Supply & Equipment Co., Altoona, Pennsylvania.
√Sheet Metal & Supply Co., Lancaster, Pennsylvania.
√Berkstresser Co., Thos J., Philadelphia, Pennsylvania.
Blessing, C. A., Philadelphia, Pennsylvania.

1 Bridgman Bros., Philadelphia, Pennsylvania.
√Cooper Sanitary Mfg. Co., Philadelphia, Pennsylvania.
√Crane Co., Philadelphia, Pennsylvania.
Fleck Bros. Co., Philadelphia, Pennsylvania.
Ford & Kendig, Philadelphia, Pennsylvania.
√Froelich Bros., Philadelphia, Pennsylvania,
√Haines, Jones & Cadbury Co., Philadelphia, Pennsylvania.
√Haynes, Thompson Co., Philadelphia, Pennsylvania.
√Hydraulic Specialty Co., Philadelphia, Pennsylvania.
√Keystone Supply & Mfg. Co., Philadelphia, Pennsylvania.
√McCambridge Cooper Co., Philadelphia, Pennsylvania.
2 √Model Heating Co., Philadelphia, Pennsylvania.
√Perkes, Charles, Philadelphia, Pennsylvania.
√Rainear & Co., C. J., Philadelphia, Pennsylvania.
Ronalds & Johnson Co., Philadelphia, Pennsylvania.
√Savill & Sons, Thos., Philadelphia, Pennsylvania.
√Schuster Plumbing Supply Co., The, Philadelphia, Pennsylvania.
√Walls, Owen & Stambach Co., Philadelphia, Pennsylvania.
Anchor Sanitary Co., Pittsburg, Pennsylvania.
Bailey-Farrell Mfg. Co., Pittsburg, Pennsylvania.
√Bowman Supply & Manufacturing Co., Pittsburg, Pennsylvania.
3 √Cullen Mfg. & Supply Co., Pittsburg, Pennsylvania.
√Duquesne Sanitary Co., Pittsburg, Pennsylvania.
√Fort Pitt Supply Co., Pittsburg, Pennsylvania.
√Harris Pump & Supply Co., The, Pittsburg, Pennsylvania.
Kelly & Jones Co., The, Pittsburg, Pennsylvania.
√Pittsburg Supply Co., Pittsburg, Pennsylvania.
√Standard Mfg. Co., Pittsburg, Pennsylvania.
√Sterling Sanitary Mfg. Co., Pittsburg, Pennsylvania.
√McClure Co., R. C. Scranton, Pennsylvania.
√Weeks Co., R. E., Scranton, Pennsylvania.
Ford & Kendig, Scranton, Pennsylvania.
4 O'Malley Mfg. Co., Scranton, Pennsylvania.
√Pennsylvania Supply Co., Wilkes-Barre, Pennsylvania.
√Wyoming Valley Supply & Mfg. Co., Wilkes-Barre, Pennsylvania.
√Small Co., P. A. & S., York, Pennsylvania.
√Peck, Benj. T., Providence, Rhode Island.
√Phillips Lead & Supply Co., Providence, Rhode Island.
Providence Plumbing Supply Co., Providence, Rhode Island.

√Tillinghast Supply Co., L. H., Providence, Rhode Island. 1
√Cameron & Barkley Co., Charleston, South Carolina.
√Bailey-Lebby Co., The, Charleston, South Carolina.
√Southern States Supply Co., Columbia, South Carolina.
√Plumbing Supply Co., Sioux Falls, South Dakota.
√Crane & Ordway Co., The, Watertown, South Dakota.
√James Supply & Hardware Co., Chattanooga, Tennessee.
√Southern Brass & Iron Co., Knoxville, Tennessee.
√Crane Co., Memphis, Tennessee.
√√Nashville Plumbers' & Mill Supply Co., Nashville, Tennessee.
Honolulu Iron Works, Honolulu, Territory of Hawaii. 2
√Crane Co., Dallas, Texas.
√Gamer Co., The, Dallas, Texas.
√Gamer Co., The, Fort Worth, Texas.
√Ahrens & Alt Mfg. Co., The, Houston, Texas.
√Higgins Co., San Antonio, Texas.
√Crane Co., Salt Lake City, Utah.
√Nelson Supply Co., Jos., Salt Lake City, Utah.
√Lincoln Iron Works, Rutland, Vermont.
√Booker & Co., H. R., Hampton, Virginia.
√Virginia-Carolina Supply Co., Norfolk, Virginia.
√Bargamin Co., C. & A., Richmond, Virginia. 3
√McGraw-Yarbrough Co., Richmond, Virginia.
√Virginia-Carolina Supply Co., Richmond, Virginia.
√Bowles Co., Seattle, Washington.
√Crane Co., Seattle, Washington.
√Hambach Co., The A., Seattle, Washington.
√Crane Co., Spokane, Washington.
√Holley-Mason Hardware Co., Spokane, Washington.
√Hughes & Co., Spokane, Washington.
√Crane Co., Tacoma, Washington.
√Walsh & Gardner, Tacoma, Washington.
√Trimble & Lutz Supply Co., Wheeling, West Virginia. 4
Murphy Supply Co., Green Bay, Wisconsin.
√La Crosse Plumbing Supply Co., La Crosse, Wisconsin.
√Roosevelt Co., W. A., La Crosse, Wisconsin.
Hobbs Supply Co., Eau Claire, Wisconsin.
√Denkel Mfg. Co., F. R., Milwaukee, Wisconsin.
√Hoffman & Billings Mfg. Co., Milwaukee, Wisconsin.
√Hoffman Mfg. Co., B., Milwaukee, Wisconsin.
√Rom Co., The Robert, Milwaukee, Wisconsin.
√Rundle-Spence Mfg. Co., Milwaukee, Wisconsin.

1 Wisconsin Plumbing & Heating Supply Co., Milwaukee, Wisconsin.

JOBBERS HAVING SIGNED NOT IN BLUE BOOK.

Coates Plumbing Supply Co. Tampa, Fla.
John Harden Co., Chicago, Ill.
Turner Supply Co. East St. Louis, Ill.
National Mills Supply Co. Ft. Wayne, Ind.
Fred C. Dryer & Co. Cumberland, Md.
Wm. Bunting, Jr. Boston, Mass.
Central Closet Mfg. Co. Holland, Mich.
2 Marshall, Wells Hardware Co. Duluth, Minn.
United States Supply Co. St. Paul, Minn.
Reeves Supply Co. Kansas City, Mo.
Koken Barbers' Supply Co. St. Louis, Mo.
Stern & Goldberg, St. Louis, Mo.
Concord Pipe Co. Concord, N. H.
Eisner Bros. & Co. Inc. Newark, N. J.
Howard Plumbing & Supply Co. Newark, N. J.
Abe Smith Patterson, N. J.
J. A. Van Winkle Co. Patterson, N. J.
George W. Peck Co. Bath, N. Y.
3 Samuel Gasmer Brooklyn, N. Y.
Buffalo Plumbing Supply Co. Buffalo, N. Y.
Canfield Supply Co. Kingston, N. Y.
M. Buda New York, N. Y.
The Burr Mfg. Co. New York, N. Y.
D. A. DeLima & Co. New York, N. Y.
Jacob Efron, New York, N. Y.
Eichenbaum Bros. New York, N. Y.
Goblet Dolan Co. New York, N. Y.
W. D. Garrett & Co. New York, N. Y.
Louis Greenberg New York, N. Y.
4 John G. Kelly New York, N. Y.
The Kenney Specialty Co. New York, N. Y.
Rumsey Pump & Machine Co. New York, N. Y.
Isidor Schwartz New York, N. Y.
Schwartz Plumbing & Supply Co. New York, N. Y.
F. Sutherland Co. New York, N. Y.
Staten Island Supply Co. Staten Island, N. Y.
John Douglas, Cincinnati, Ohio.
Walter E. King Cincinnati, Ohio.

A. J. Roab, Kingston, Pa.
Pittsburg Inc. Supply Co. Pittsburg, Pa.
C. M. McClung & Co. Knoxville, Tenn.
H. A. Carpenter & Bros. El Paso, Tex.
Riverside Potteries Co. Wheeling, W. Va.
Jenkins Mfg. Co. New York, N. Y.
Blue and Queritle, New York, N. Y.
T. Noonan & Co. Boston, Mass.
Anderson, Lore Co. Los Angeles, Cal.
Westchester Supply Co. White Plains, N. Y.

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1 PETITIONER'S EXHIBIT No. 31.

Filed Nov. 2, 1910, by stipulation in substitution for Exhibit No. 31, filed Nov. 1, 1910.

EDWIN L. WAYMAN
1509 Arrott Building
Pittsburgh

April 16, 1910.

The Price and Schedule Committee created at the meeting held in New York City, for the purpose of concluding the License and Resale Agreements, have just completed a
2 special session held at Mt. Clemens, Mich. beginning April 8th and ending April 14th.

All the details of the License Agreement and Jobbers' Agreement were thoroughly gone into and considered, every paragraph being carefully weighed; the Committee making such additions or eliminations as they considered advisable.

Some changes were made in the arrangement of the Schedules as you will note by the attached copy as well as some changes in the differentials. All members who had suggestions to make or those whom the Committee desired to see, appeared before them and after going into all details
3 and bringing up every possible question they went away entirely satisfied after having presented the Committee with letters, several of which are given below:

> "We hereby accept your proposition as to a License Agreement under Dredger Patents by which we are permitted to use said Patents, and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebates that you may hereafter decide upon; it being understood that all Licensees shall be upon the same uniform schedule
> 4 of prices per furnace and the same uniform change and rebate. We further agree to maintain any and all stipulations and provisions set forth in the schedule and also to the different differentials established for our Company as shown in the attached sheet."
>
> "After having met with the Committee and gone into the matter very carefully, we have given it due consideration and in the matter of harmony, we will waive all demands which we made in our previous

letter as to schedule, and will agree to manufacture all ware which we make under one of the three dredger patents and we will also agree to the schedule of differentials in prices as submitted by your Committee, and trust that our action will enable you to harmonize other interests." 1

The Committee will hold additional Meetings Tuesday April 19th at Pittsburgh and Thursday April 21st, at New York City, which Meetings are believed will finish all the preliminaries. You may, therefore, expect to receive a notice calling a General Meeting to be held in New York City during the first week in May for the purpose of executing the final License Agreement Papers which will put this and the Re-sale proposition into effect on June 1st., which date is being expected and insisted upon by the Jobbers throughout the country. The Papers you will be asked to sign at this meeting will not be subject to any further changes. They embrace the best suggestions made to the Committee, have been passed on by the best legal talent in the Country and it will not be feasible to make any additional changes in order to meet the ideas of the attorneys of the individual Companies. Will you, therefore, come prepared to sign or bring such principals with you that have authority to conclude the matter? 2 3

Yours very truly,

(Signed) E. L. WAYMAN.

The following "Preferentials Discounts" from the Selling Prices established by the Licensor will be allowed the various Manufacturers on Sales to Jobbers only.

Schedule 1 —5 year Guaranteed Baths
" 2 —2 " " "
" 3 —All other grades of Baths
" 4 —Small Ware—Lavatories, etc.
" 4½—R. H. Sinks, Slop Sinks, Sink Backs, Drain Boards, Factory Sinks, Urinals, Hoppers, Laundry 4
5 —Sin
6 —Com
7 —Clos

. 562.

SCHEDULES.

Manufacturers.

	1	2	3	4	4½	5	6	7
Standard	None	None	None	None	None	None	None	None
Wolff	"	"	"	"	"	"	"	"
U. S.	"	"	"	"	"	"	"	"
Kohler	"	"	"	"	"	"	"	"
Barnes	"	"	"	"	"	"	"	"
Cahill	"	"	"	"	"	"	"	"
Mott	"	"	"	"	"	"	"	"
Union	5%	"	"	2½%	2½%	"	"	"
Colwell	5%	2½%	"	2½%	2½%	"	"	"
Clymer	5%	2½%	"	5%	5%	2½%	2½%	2½%
Blairsville	5%	2½%	"	5%	5%	2½%	2½%	2½%
McVay & Walker	5%	2½%	"	5%	5%	2½%	2½%	2½%
Kerner	5%	2½%	"	5%	5%	None	2½%	None
Weiskittel	5%	2½%	"	2½%	2½%	None	None	None
National	5%	2½%	"	2½%	2½%	None	None	None
Humphryes	5%	2½%	"	2½%	2½%	None	None	None
Day-Ward	5%	None	"	2½%	2½%	None	None	None
McCrum-Howell	5%	2½%	"	2 5%	2½%	None	None	None
Wheeling	5%	2½%	"	2½%	2½%	None	None	None

The above "Preferential Discounts" shall not apply on sales to the Plumber when made either by the Jobbers or direct by the Manufacturers.

All makes of goods shall be sold to the Plumber at the Resale Prices that may be established in the sheets.

PETITIONER'S EXHIBIT No. 32.

Filed Nov. 1, 1910.

The Colonial,
Mt. Clemens, Mich.
Mineral Baths in Connection
Address
all communications to
The Colonial.

April Eleventh, Nineteen Ten.

Mr. H. M. Hoelscher, Chairman,
Colonial Hotel,
Mt. Clemens, Mich.

My dear sir:—

After having met with the Committee and gone into the matter very carefully, we have given it due consideration and in the matter of harmony, we will waive all demands which we made in our previous letter as to schedule, and will agree to manufacture all ware which we make under one of the three dredger patents, and we will also agree to the schedule of differentials in prices as submitted by your Committee, and trust that our action will enable you to harmonize other interests.

Yours very truly,
THE DAY WARD CO.
By A. G. WARD, V. P.

PETITIONER'S EXHIBIT No. 33.

Filed Nov. 1, 1910.

The Colonial,
Mt. Clemens, Mich.
Mineral Baths in Connection
Address
all communications to
The Colonial.

April Eleventh, Nineteen ten.

Mr. H. M. Hoelscher, Chairman,
Colonial Hotel,
Mt. Clemens, Mich.

My dear sir:—

After meeting with your Committee and having gone over in detail all of the matters under consideration, we hereby agree to manufacture all our ware under the standard Dredger patents, and also agree to the schedule of differentials in prices as submitted to me by your Committee.

Very truly yours,
C. E. GATES, *V. P. & Mngr.*
UNION SANITARY MFG. CO.,
Noblesville, Ind.

PETITIONER'S EXHIBIT No. 34.

Filed Nov. 1, 1910.

The Colonial,
Mt. Clemens, Mich.
Mineral Baths in Connetion
Address
all communications to
The Colonial.

April Twelfth, Nineteen Ten.

Mr. H. M. Hoelscher, Chairman,
Colonial Hotel,
Mt. Clemens, Mich.

Dear sir:—

The meeting with your Price and Schedule Committee has been entirely satisfactory to the National Sanitary Company, we agreeing to the Schedule of differentials as presented, also to work under the Standard Dredger Patents.

We also wish to compliment the Committee on the progress made and fully hope that the Meeting will close at an early date with your efforts appreciated by all and a satisfactory ending.

Yours very truly,
NATIONAL SANITARY MFG. CO.
F. G. BORDEN, *Pres.*

PETITIONER'S EXHIBIT No. 35.

Filed Nov. 1, 1910.

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

Colonial Hotel,
Mt. Clemens, Mich.

April 12th, 1910.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir:—

We hereby accept your proposition as to a License Agreement under U. S. Patent No. 633,941, granted to James Arrott Sept. 26th, 1899, by which we are permitted to use said Patent and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation; less such rebate that you may hereafter decide upon; it being understood that all Licenses shall be upon the same uniform schedule of Prices per furnace and the same uniform charge and rebate.

We further agree to maintain any and all stipulations and provisions set forth in the Schedules and also to the differentials established for our Company as shown in the attached sheet.

HUMPHRYES MFG. CO.
By H. D. KENNEY.

PETITIONER'S EXHIBIT No. 36.

Filed Nov. 1, 1910.

The Colonial,
Mt. Clemens, Mich.
Mineral Baths in Connection
Address
all communications to
The Colonial.

April thirteenth, Nineteen Ten.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

We hereby accept your proposition as to a License Agreement under Dredger Patents by which we are permitted to use said Patents and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebate that you may hereafter decide upon: it being understood that all Licenses shall be upon the same uniform schedule of prices per furnace and the same uniform charge and rebate.

We further agree to maintain any and all stipulations and provisions set forth in the Shedules and also to the differentials established for our Company as shown in the attached sheet.

A. W. WEISKITTEL & SON CO.
By ANTON WEISKITTEL.

1 PETITIONER'S EXHIBIT No. 37.

Filed Nov. 1, 1910

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

April nineteenth, Nineteen Ten.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

2 We hereby accept your proposition as to a License Agreement under Dredger Patents by which we are permitted to use said Patents and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebate that you may hereafter decide upon; it being understood that all Licenses shall be upon the same uniform schedule of prices per furnace and the same uniform charge and rebate.

We further agree to maintain any and all stipulations and provisions set forth in the Schedules and also to the 3 differentials established for our Company as shown in the attached sheet.

Yours truly,
WHEELING ENAMELED IRON CO.
by J. E. WRIGHT, *Prest.*

4

PETITIONER'S EXHIBIT No. 38.

Filed Nov. 1, 1910.

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

April nineteenth, nineteen Ten

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

We hereby accept your proposition as to a License Agreement under Dredger Patents by which we are permitted to use said Patents and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebate that you may hereafter decide upon; it being understood that all Licenses shall be upon the same uniform schedule of prices per furnace and the same uniform charge and rebate.

We further agree to maintain any and all stipulations and provisions set forth in the Schedules and also to the differentials established for our Company as shown in the attached sheet.

(signed) McVAY & WALKER.
per A. C. WALKER

PETITIONER'S EXHIBIT No. 39.

Filed Nov. 1, 1910.

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

April nineteenth, Nineteen Ten.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

We hereby accept your proposition as to a License Agreement under Dredger Patents by which we are permitted to use said Patents and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebate that you may hereafter decide upon; it being understood that all Licenses shall be upon the same uniform schedule of prices per furnace and the same uniform charge and rebate.

We further agree to maintain any and all stipulations and provisions set forth in the Schedules and also to the differentials established for our Company as shown in the attached sheet.

(signed) KERNER MFG. CO.
H. T. FRAUENHEIM, *Secy.*

PETITIONER'S EXHIBIT No. 40. 1

Filed Nov. 1, 1910.

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

April twenty-first, Nineteen Ten.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

We hereby accept your proposition as to a License 2
Agreement under Dredger Patents by which we are permitted to use said Patents and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebate that you may hereafter decide upon; it being understood that all Licenses shall be upon the same uniform schedule of prices per furnace and the same uniform charge and rebate.

We further agree to maintain any and all stipulations and provisions set forth in the Schedules and also to the differentials established for our Company as shown in the 3
attached sheet.

(signed) THE J. L. MOTT IRON WORKS
E. HAMMANN.

4

1

PETITIONER'S EXHIBIT No. 41.

Filed November 1, 1910.

NOTE: This exhibit consists of a price list issued June 1, 1910, and contains 276 printed pages. Only the first few pages will be incorporated in this volume of Petitioner's Exhibits. Beginning with the cover the exhibit reads as follows:

2

PRICE LIST.

3

4

"LICENSED"
SANITARY ENAMELED IRON WARE.
June 1st, 1910.

LICENSED
SANITARY ENAMELED IRON WARE.

The Patented Automatic Enameling Processes adopted by the Licensed Companies cover substantially all the ways in which Sanitary Enameled Iron Ware may be enameled economically and with durability and are essential to the production of Ware of the highest quality.

That the Ware made in accordance with these Patented Processes, may be easily identified, each fixture after June 1st, 1910, will bear the following Label:

LICENSED WARE

Patented

This fixture is in accordance lowing United Patent:

Manufactured with the fol- States Letters

Sept. 26th, 1899, No. 633,941
Nov. 9th, 1909, No. 939,918
Feb. 15th, 1910, No. 949,625

LICENSED LABEL

(Enlarged Reproduction.)

and its presence evidences that the best materials and processes have been employed in its manufacture.

Licensed Sanitary Enameled Iron Ware embodies all that is significant of

QUALITY AND PROGRESS.

June 1st, 1910.

TO LICENSED JOBBERS' SALESMEN:

This Price List is the property of E. L. Wayman, Arrott Building, Pittsburgh, and is loaned to you with the understanding that it is subject to recall at any time. The prices given herein are the Selling Prices I have established to Plumbers on Sanitary Enameled Iron Ware manufactured by the following companies, operating under patents owned by me and to whom I have granted licenses:

Barnes Manufacturing Co., The.....	Mansfield, Ohio.
Cahill Iron Works, The	Chattanooga, Tenn.
Colwell Lead Company.....	New York
Day-Ward Co., The.....	Warren, Ohio
Humphryes Manufacturing Co.	Mansfield, Ohio.
Kerner Manufacturing Co.	Pittsburgh, Pa.
Mott Iron Works, The J. L.....	New York
McCrum-Howell Co.....	New York
McVay & Walker.....	Braddock, Pa.
National Sanitary Manufacturing Co...	Salem, Ohio
Standard Sanitary Manufacturing Co.	Pittsburgh, Pa.
Union Sanitary Manufacturing Co. ..	Noblesville, Ind.
United States Sanitary Manufacturing Co.	Pittsburgh, Pa.
Wolff Manufacturing Co., L.....	Chicago, Ill.
Weiskittel & Son Co., A.....	Baltimore, Md.
Wheeling Enameled Iron Co.....	Wheeling, W. Va.

It is necessary for all Licensed Manufacturers to sell their product manufactured in accordance with these Patents on the terms herein established and you are hereby notified that the License Agreements executed by your Company obligates it to resell the various Licensed Products at no better prices, terms, or other regulations than herein established. As changes, additions or eliminations occur, new sheets will be issued promptly.

E. L. WAYMAN.

Arrott Building, Pittburgh, Pa.

PAGE 1 1

CLASSIFICATION.

CLASSIFICATION OF SANITARY ENAMELED IRON WARE PRODUCTS.

Schedule No. 1—5 year Guaranteed Baths, Foot, Pool, Sitz and Child's, and Receptors .....

Schedule No. 2—2 year Guaranteed Baths..... 2

Schedule No. 3—All other Grades of Baths ....

Schedule No. 4—Small Wares, Drinking Fountains, Lavatories, etc..... CLASSIFICATIONS
Exceptions: Lavatories, similar to Plates (Standard) P-558, 559, 561 and 562.....

Schedule No. 4—½-Roll Rim Sinks and Combinations, Slop Sinks, Sink Backs and Ends, Drain Boards, Factory and Wash Sinks, Sink and Tray Combinations, Laundry Trays, Closet Bowls and Urinals.... 3

Schedule No. 5—Flat Rim Sinks and Combinations, Square and Round Corner Kitchen; Half Circle, Corner, Slop Sinks, Slop Hoppers, Wash Bowls, Trap Standards and Grease Traps

Schedule No. 6—Tanks, Closet and Urinal, High and Low Pattern 4

JUNE 1ST, 1910.

1 GENERAL CONDITIONS. PAGE 2

PRICES

Prices or other regulations are effective the morning of the date appearing on the sheet.

All prices are for bare fixtures WITHOUT fittings, except where specified.

Car load prices shall apply to shipments of Enameled Ware in car load lots in ONE DELIVERY only, to one purchaser and paid for by one purchaser.

LUMP SUMS

2 The ware covered by the Price Sheets shall be invoiced by individual items, fixtures to be billed separately (less all Fittings) and it is not permissible to bill collectively several articles in a "Lump Sum."

GUARANTIES

The various conditions respecting "Guarantees" under which the ware is purchased by the Jobber shall not be varied in the resale to the Plumber.

DELIVERIES.

3 Goods will be sold to the purchaser F. O. B. Cars where factory is located, at the prices given in the Resale Sheets for the various zones with full freight allowed on shipments of 200 pounds and over (subject to the Freight Tariff Regulations herein provided for) to the list of cities named in the various zones. To other points than those named, delivery can be made only on the basis of the Purchaser being charged and paying freight from the nearest city named.

DELIVERIES

4 NOTE: Goods may be shipped in mixed car loads to all points on, or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the railroad tariffs and Classifications.

Goods shall be sold at prices established and prevailing in the various zones into which the goods are shipped, regardless of the point of purchase.

DELIVERIES, PAGE 2—Continued. 1

Purchaser (Jobbers only) will be allowed car load prices in any quantity on shipments to the manufacturing and jobbing points specified. On shipments to jobbing points, other than manufacturing points, car load or less car load prices will apply according to quantity. JUNE 1ST 1910

PAGE 3

DELIVERIES—Continued.

FROM JOBBER'S STOCK—ZONES—1, 2, 3, 4 and 5. 2

All shipments from Jobber's Stocks to other than Jobbing Points in Zones 1, 2, 3, 4 and 5 shall be billed F. O. B. Cars Point of Shipment.

If Jobbers find it necessary on Shipments from Stock to Non-Jobbing Points to equalize with other Jobbing Points, such Equalizations shall be made on the basis of the weights given in the Sheets and at the rates given in the Equalizing Freight Tariff Schedule. DELIVERIES 3

FROM JOBBER'S STOCKS—ZONES—5, 7, 8, 9, 10 and 11.

All Shipments from Jobber's Stocks to other than Jobbing Points in Zones 5, 6, 7, 8, 9, 10 and 11 shall be billed F. O. B. Cars Point of Shipment with actual freight allowed to Non-Jobbing Points.

DIRECT SHIPMENTS

FROM FACTORY—ALL ZONES. 4

Shipments to other than Jobbing Points made direct from the factory on Jobber's orders, or sales made direct to Plumbers by the Manufacturers, shall be billed at the prevailing Zone Prices plus freight charges from the nearest Jobbing Point, based on the weights given in the Sheets and at the rates given in the Freight Equalizing Tariff Schedule. JUNE 1ST, 1910

1

PAGE 4

FREIGHT ZONE (General)—Manufacturing and Jobbing Points

Car Load Zone 1, Prices will be allowed Purchaser (Jobber only) and actual freight allowed on C. L. and L. C. L. Shipments of 200 pounds and over to the following Manufacturing and Jobbing Points:

2

Allegheny, Pa.
Baltimore, Md.
Chicago, Ill.
Cincinnati, Ohio
Louisville, Ky.
Milwaukee, Wis.
Pittsburgh, Pa.
Wheeling, W. Va.

MANUFACTURING POINTS WHERE JOBBERS ARE LOCATED

The same conditions at Zone 2 Prices, will apply on shipments to

3

Chattanooga, Tenn.

Goods *must be sold to the Plumber at the Quantity Prices* established in the Sheets.

JUNE 1ST, 1910.

4

FREIGHT ZONE—No. 1.

PAGE 5

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 1, with full freight allowed on shipments of 200 pounds and over to the following cities:

Anderson, Ind.	Guttenberg, N. J.	Providence, R. I.
Albany, N. Y.	Hampton, Va.	Richmond, Va.
Altoona, Pa.	Hartford, Conn.	Rochester, N. Y.
Bangor, Me.	Indianapolis, Ind.	Rockford, Ill.
Bayonne, N. J.	Jersey City, N. J.	Rutland, Vt.
Boston, Mass.	Kalamazoo, Mich.	Scranton, Pa.
Bridgeport, Conn.	Lancaster, Pa.	Somerville, Mass.
Brooklyn, N. Y.	Lansing, Mich.	Springfield, Mass.
Buffalo, N. Y.	Long Island City, N. Y.	St. Louis, Mo.
Camden, N. J.	Lynn, Mass.	Syracuse, N. Y.
Cambridgep't, Mass.	Manchester, N. H.	Terra Haute, Ind.
Canton, O.	Mansfield, O.	Toledo, O.
Cleveland, O.	Menominee, Mich.	Trenton, N. J.
Columbus, O.	Muncie, Ind.	Troy, N. Y.
Cumberland, Md.	Newark, N. J.	Union City, Ind.
Davenport, Iowa.	New Bedford, Mass.	Utica, N. Y.
Dayton, O.	New Haven, Conn.	Washington, D. C.
Detroit, Mich.	New Rochelle, N. Y.	Watertown, N. Y.
Dubuque, Iowa.	New York, N. Y.	Weehawken, N. J.
East Orange, N. J.	Norfolk, Va.	Wilmington, Del.
Elizabeth, N. J.	Paterson, N. J.	Wilkesbarre, Pa.
Elmira, N. Y.	Peoria, Ill.	Worcester, Mass.
Fort Wayne, Ind.	Philadelphia, Pa.	Yonkers, N. Y.
Grand Rapids, Mich.	Portland, Me.	York, Pa.

FREIGHT ZONE 1 JOBBING POINTS

or to such points as may be fixed from time to time.

To other than Jobbing Points in the following states:

Connecticut	Massachusetts	Rhode Island
Delaware	Michigan	Vermont
Illinois	New Hampshire	Virginia
Indiana	New Jersey	West Virginia
Kentucky	New York	Wisconsin
Maine	Ohio	
Maryland	Pennsylvania	

delivery can be made only on the basis of your being charged and paying freight from the nearest Jobbing Point in the above list of cities based on respective C. L. or L. C. L. shipments.

JUNE 1 1910.

FREIGHT ZONE—No. 2.

PAGE 6

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 2, with full freight allowed on shipments of 200 pounds and over to the following cities:

Atlanta, Ga.	Knoxville, Tenn.
Birmingham, Ala.	Little Rock, Ark.
Chattanooga, Tenn.	Savannah, Ga.
Charleston, S. C.	Memphis, Tenn.
Columbia, S. C.	Nashville, Tenn.
Jacksonville, Fla.	New Orleans, La.

FREIGHT ZONE 2 JOBBING POINTS

or to such points as may be fixed from time to time.

To other than Jobbing Points in the following States:

Alabama	Mississippi
Arkansas	North Carolina
Florida	South Carolina
Georgia	Tennessee
Louisiana	

delivery can be made only on the basis of your being charged and paying freight from the nearest Jobbing Point in the above list of cities, based on respective C. L. or L. C. L. shipments.

JUNE 1ST, 1910

FREIGHT ZONE—No. 3.

PAGE 7

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 3, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following Cities:

Cedar Rapids, Ia.	Ft. Dodge, Ia.	Minneapolis, Minn
Davenport, Ia.	Green Bay, Wis.	Omaha, Neb.
Des Moines, Ia.	Kansas City, Mo.	St. Joseph, Mo.
Dubuque, Ia.	LaCrosse, Wis.	St. Paul, Minn.
Duluth, Minn.	Lincoln, Neb.	Sioux City, Ia.

or to such points as may be fixed from time to time.

FREIGHT ZONE 3 JOBBING POINTS

To other than Jobbing Points in the following States:

Iowa	Missouri
Kansas	Nebraska
Minnesota	

delivery can be made only on the basis of your being charged and paying freight from the nearest Jobbing Point in the above list of cities, based on respective C. L. or L. C. L. shipments.

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the Railroad Tariffs and Classifications.

JUNE 1ST, 1910.

1 FREIGHT ZONE—No. 4.

PAGE 8

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 4, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following cities:

Aberdeen, S. D.
Fargo, N. D.

2

or to such points as may be fixed from time to time.

FREIGHT ZONE 4

JOBBING POINTS

To other than Jobbing Points in the following States:

North Dakota
South Dakota

delivery can be made only on the basis of your
3 being charged and paying freight from the nearest Jobbing Point in the above list of cities, based on respective C. L. or L. C. L. shipments.

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in
4 the Railroad Tariffs and Classifications.

JUNE 1ST 1910.

FREIGHT ZONE—No. 5.

PAGE 9

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 5, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following Cities:

Dallas, Texas
Fort Worth, Texas
Houston, Texas
Oklahoma City, Okla.
San Antonio, Texas
Wichita, Kan.

FREIGHT ZONE 5 JOBBING POINTS

or to such points as may be fixed from time to time.

To other than Jobbing Points in the following States:

Oklahoma
Texas

delivery can be made only on the basis of your being charged and paying freight from the nearest Jobbing Point in the above list of cities, based on respective C. L. or L. C. L. shipments.

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the Railroad Tariffs and Classifications.

JUNE 1ST 1910.

1 FREIGHT ZONE—No. 6.

PAGE 10.

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 6, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following Cities:

DENVER, COLO.
PUEBLO, COLO.

FREIGHT
FREIGHT
ZONE 6
JOBBING
POINTS

2 or to such points as may be fixed from time to time.

To other than Jobbing Points in the following States:

COLORADO
WYOMING

delivery can be made only on the basis of your being charged and paying freight from the
3 nearest Jobbing Point in the above list of Cities, based on respective C. L. or L. C. L. shipments.

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed carloads to points so provided for in the Railroad Tariffs and Classifications.

4 On L. C. L. Shipments from Stock, Jobbers shall allow full freight to all non-jobbing points in Zone 6.

JUNE 1ST, 1910.

FREIGHT ZONE—No. 7. 1

PAGE 11

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 7, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following cities:

Salt Lake City, Utah

or to such points as may be fixed from time to time. 2

To other than Jobbing Points in the following States: FREIGHT ZONE 7 JOBBING POINTS

Southern Idaho (South of 45th Parallel)
Utah

delivery can be made only on the basis of your being charged and paying freight from the nearest Jobbing Point in the above list of cities, based on respective C. L. or L. C. L. shipments. 3

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the Railroad Tariffs and Classifications.

On L. C. L. Shipments from Stock, Jobbers shall allow full freight to all non-jobbing points in Zone 7. JUNE 1ST 1910 4

1 FREIGHT ZONE—No. 8.

PAGE 12

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 8, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following city:

Butte, Montana

2 or to such points as may be fixed from time to time.

FREIGHT ZONE 8

JOBBING POINTS

To other than Jobbing Points in the following State:

Montana

delivery can be made only on the basis of your being charged and paying freight from the above city, based on respective C. L. or L. C. L. shipments.

3

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the Railroad Tariffs and Classifications.

JUNE 1ST, 1910

On L. C. L. Shipments from Stock, Jobbers shall allow full freight to all non-jobbing points in Zone 8.

4

FREIGHT ZONE—No. 9. 1

PAGE 13

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located at the Quantity Prices established for Zone 9, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following city:

Spokane, Washington

or to such points as may be fixed from time to time. 2

To other than Jobbing Points in the following States: FREIGHT ZONE 9 JOBBING POINTS

Northern Idaho (North of 45th Parallel)
Eastern Washington (East of 120th Meridian)

delivery can be made only on the basis of your being charged and paying freight from the above city, based on respective C. L. or L. C. L. shipments. 3

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the Railroad Tariffs and Classifications.

On L. C. L. Shipments from Stock, Jobbers shall allow full freight to all non-jobbing points in Zone 9. JUNE 1ST, 1910 4

FREIGHT ZONE—No. 10.

PAGE 14

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located, at the Quantity Prices established for Zone 10, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following cities:

Los Angeles, Cal.	San Diego, Cal.
Oakland, Cal.	San Francisco, Cal.
Portland, Oregon	Seattle, Wash.
Sacramento, Cal.	Tacoma, Wash.

FREIGHT ZONE 10 JOBBING POINTS

or to such points as may be fixed from time to time.

To other than Jobbing points in the following States:

California,
Nevada
Oregon
Washington (west of 120th Meridian)

delivery can be made only on the basis of your being charged and paying freight from the nearest Jobbing Point in the above list of cities, based on respective C. L. or L. C. L. shipments.

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the Railroad Tariffs and Classifications.

On L. C. L. Shipments from Stock, Jobbers shall allow full freight to all non-jobbing points in Zone 10.

JUNE 1ST, 1910

FREIGHT ZONE—No. 11. 1

PAGE 15

Goods will be sold to the Purchaser F. O. B. Cars where Factory is located, at the Quantity Prices established for Zone 11, with full freight allowed on shipments of 200 pounds and over, subject to the Freight Tariff Regulations hereinafter provided for, to the following city:

Phœnix, Arizona

or to such points as may be fixed from time to time. FREIGHT ZONE 11 JOBBING POINTS 2

To other than Jobbing Points in the following States:

Arizona
New Mexico

delivery can be made only on the bases of your being charged and paying freight from the nearest Jobbing Point in the above list of cities, based on respective C. L. or L. C. L. shipments. 3

NOTE:—Goods may be shipped in mixed car loads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic Seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed car loads to points so provided for in the Railroad Tariffs and Classifications.

On L. C. L. Shipments from Stock, Jobbers shall allow full freight to all non-jobbing points in Zone 11. JUNE 1ST, 1910 4

[NOTE. This page is a typical page printed from the price list, Petitioner's Exhibit No. 41.]

BATHS—5 YEAR GUARANTEED—Schedule 1.
1½" to 2½" Rim.

Page 1

Similar to

Day-Ward	Sterling, Special, Venice
Humphryes	Pilgrim, Priscilla
Iron City	Regina, Florodora
Kohler	Narospace, Rival, Lotus
McCrum Howell	Richmond
McVay Walker	Mendota Naro
Mott	
National	Salvia
Standard	Shawmut, Keystone, Arlene, Ionian
United States	Excelsior
Union	
Wolff	
Weiskittel	Peerless, Worran

Baths 5 year

Length	4'-4½'	5'	5½'	6'	
List	$31.00	$35.00	$39.50	$46.00	
Shipping Weight	270 Lbs.	315 Lbs.	340 Lbs.	400 Lbs.	

DISCOUNTS.

	Zone	1	2	3	4	5	6	7	8	9	10	11
4'-4½'	L. C. L.	47	41	43	35	34	30	22	20	18½	31	15
	C. L.	50	45	46	42	38½	41	33	32⅓	31	36½	26½
5'	L. C. L.	47	42	44	36	34½	30½	22½	20	18½	31	15½
	C. L.	50	45½	47½	43	39½	39½	34	33⅓	31½	37	27
5½'	L. C. L.	46	41½	43	35	34	30½	22½	20	18½	30½	15
	C. L.	49	44½	46	42	38½	39	33⅓	33	31	36½	27
6'	L. C. L.	46	41½	43	35	34	30	22	20	18½	30½	15
	C. L.	49	44½	46	42½	38½	39	33⅓	32½	31	36½	27

Schedule 1

June 1, 1910

PETITIONER'S EXHIBIT No. 42. 1

Filed Nov. 1, 1910.

EDWIN L. WAYMAN.
Arrott Building.
Pittsburg.

May 28, 1910.

To the Jobbing Trade:

Gentlemen:—

Having acquired by purchase full ownership of the United States Letters Patent enumerated herein and being interested in maintaining the value of said Letters Patent, I have licensed the following manufacturers: 2

Barnes Mfg. Co. The	Mansfield, Ohio.
Cahill Iron Works, The	Chattanooga, Tenn.
Colwell Lead Co., ...	New York,
Day-Ward Co. The	Warren, Ohio.
Humphryes Mfg. Co. The, ...	Mansfield, Ohio.
Kerner Mfg. Co., ...	Pittsburgh, Pa.
Mott Iron Works, The J. L., .	New York City.
McVay & Walker	Braddock, Pa. 3
McCrum-Howell Co.	New York City.
National Sanitary Mfg. Co., ..	Pittsburgh, Pa.
Standard Sanitary Mfg. Co., ..	Salem, Ohio.
Union Sanitary Mfg. Co.	Noblesville, Ind.
U. S. Sanitary Mfg. Co.	Pittsburg, Pa.
Wolff Mfg. Co.	Chicago, Ill.
Weiskittel & Son Co. A	Baltimore, Md.
Wheeling Enameled Iron Co.,	Wheeling, W. Va.

to practice in the manufacture of Sanitary Enameled Iron Ware the processes patented in said several Patents, to make and use in such manufacture, the machines and devices patented in said Patents and to use and sell goods so made on terms and conditions, the details of which I will send you on May, 31st. 4

Schedule of Patents.

Patent No.	*Date*	*Inventor*	*Title*
633,941.	Sept. 26th, 1899	James Arrott	Dredger for Pulverulent. Material
944,625.	Feb. 15th, 1910	E. Ditheridge	Pneumatic Sieve
939,918	Nev. 9th, 1909	Wm. Lindsay	Enameling Powder. Distributor.

The Enameling Process Patents enumerated above cover substantially all the ways in which Sanitary Enameled Iron Ware may be enameled economically and with durability and are essential to the production of Ware of the highest quality.

The terms and conditions under which the various Companies have been licensed provide only a reasonable Manufacturer's profit and it will be the aim of the Licensed Manufacturers to give the ultimate consumer the benefits derived through improved manufacturing methods and equipment.

In behalf of the Licensed Manufacturers, I therefore, ask your support in the effort to better conditions and to improve the general quality of Enameled Iron Ware, thereby increasing the use of the various licensed products to mutual advantage.

Yours very truly,

E. L. WAYMAN,
Licensor.

PETITIONER'S EXHIBIT No. 43.

Filed Nov. 1, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh.

May 31, 1910.

To the Jobbing Trade:

Referring to my letter of May 19th regarding the Resale Price List covering Licensed Sanitary Enameled Iron Ware, and my letter of the 28th, would state that it has developed at the last moment, owing to several changes and additions in the Price List, that it is a physical impossibility for the printer to complete the printed matter in the time contemplated.

The Price List will, therefore, become effective on the morning of June 6th, and the printed matter will be in your hands on that date. I regret exceedingly the circumstances, but the fact that a Price List containing approximately 300 pages with over 35,000 discount calculations, giving delivered prices at all Jobbing Points in every State, and equalizing rates to approximately 4,000 towns, has been compiled and printed in almost four weeks' time, speaks for itself.

Yours very truly,

E. L. WAYMAN.

1 **PETITIONER'S EXHIBIT No. 44.**

Filed Nov. 1, 1910.

EDWIN L. WAYMAN
1509 Arrott Building
Pittsburgh

May 19th, 1910.

To the Jobbing Trade:

Will you kindly advise me by return mail how many copies of the Resale Price List covering "Licensed" Sanitary
2 Enameled Iron Ware you will require for salesmen and office use? This Price List will become effective June 1st and I would thank you for a prompt reply to this letter. Full details will be mailed you at the proper time, and the Price Books forwarded via Express.

Very truly yours,

E. L. WAYMAN.

P. S. Jobbers "West of Missouri River Points" kindly telegraph replies.

3

4

PETITIONER'S EXHIBIT No. 45.

Filed Nov. 1, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburg

June 3rd. 1910.

To the Jobbing Trade:

The Sanitary Enameled Iron Ware industry has in the past been handicapped by the production and the marketing of quantities of "Seconds" or defective goods, due to improper designs, manufacturing methods and equipment. Such goods have been disposed of by the Manufacturers as other than "Seconds" but some unscrupulous Purchasers have in a great many instances disposed of them by misrepresentation thereby causing the Public who buy such goods to condemn Sanitary Enameled Iron Ware to the detriment of the industry as a whole.

The basic object of the Licensed Manufacturers in adopting uniform methods of manufacture is to eliminate as far as possible the production and disposal of "Seconds" thereby improving the general quality of their Ware.

The Patented Automatic Enameling Processes adopted by the Licensed Companies cover substantially all the ways in which Sanitary Enameled Iron Ware may be enameled economically and with durability and are essential to the production of Ware of the highest quality.

That the Ware, made in accordance with these Patented Processes, may be easily identified, each Fixture manufactured after June 1st, 1910, will bear the following Label.

LICENSED WARE
Patented

This Fixture is Manufactured
In accordance With the Fol-
lowing United States Letters
Patent:

Sept. 26th. 1899, No. 633,941
Nov. 9th. 1909, No. 939,918
Feb. 15th. 1910, No. 949,625
(Enlarged Reproduction)

charges from the nearest Jobbing Point based on the weights given in the Sheets and at the rates given in the Freight Equalizing Tariff Schedule.

BOXING AND CRATING

These charges will be made on all goods by the Manufacturers and must be made by all Jobbers in the Resale at the Prices given in the Sheets. These prices are net (subject to the Discounts and Rebates *only* that are named in the "Jobbers License Agreement." The same applies to charges for Drilling, Decorating and other miscellaneous items shown in the Sheets.

SALES BY JOBBERS TO OTHER JOBBERS.

Sales by one Jobber to another cannot be made at any better prices than those established in the Resale Sheets.

GUARANTEES

The various conditions respecting Guarantees under which the Ware is purchased by the Jobber shall not be varied in the Resale to the Plumber. Particular attention is called to the practice that has been established in the past of labelling Non-Guaranteed Baths with the Jobbers Guaranteed Label. This practice will be considered a violation of the Jobbers' License Agreement.

Additional Sheets will be issued as fast as possible on items not covered in the enclosed Sheets.

The discounts herein named have been compiled with as much care and accuracy as would permit in the short time allotted to distributing these sheets to the jobbing trade, and you will confer a great favor by reporting promptly any apparent discrepancies or errors.

Yours truly,

E. L. WAYMAN,
Licensor.

PETITIONER'S EXHIBIT No. 46.

Filed Nov. 1, 1910.

At the time you send out the Jobbers' Agreement Contracts to your Trade, copies of which I will furnish you this week, please write them the following letter without any change in the wording given.

"Enclosed find copies in duplicate of Contracts covering the purchase of Licensed Sanitary Enameled Iron Ware for the period beginning June 1st. and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at one. It is necessary for you to execute these Contracts before we can sell you Licensed Sanitary Enameled Ware."

Yours very truly,

(Signed)

Company

Yours truly,

Licensor

PETITIONER'S EXHIBIT No. 47.

Filed Nov. 1, 1910.

May 28, 1910.

Mr. F. J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburg, Penna.

Dear Sir:—

At the time you send out the Jobbers' Agreement Contracts to your Trade, copies of which I will furnish you this week, please write them the following letter without any change in the wording given.

"Enclosed find copies in duplicate of Contracts covering the purchase of Licensed Sanitary Enameled Iron Ware for the period beginning June 1st. and ending Dec. 31st. 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you Licensed Sanitary Enameled Ware."

Yours truly,

Signed: Company

Yours truly,

Signed: E. WAYMAN.
Licensor.

Mr. Gregg:

I want 500 (in numbers) such letters printed immediately.

F. J. T.

PETITIONER'S EXHIBIT No. 48.

Filed Nov. 1, 1910

Feb. 10. 1910.

E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

Acknowledging yours of the 7th regarding resale price and license arrangement. We are not prepared to state today that we would enter into a license arrangement and consequently are not sending you a list of our patents.

As you know, we are opposed to price agreements, but we are interested in anything which pertains to the betterment of business conditions and if anything develops along the line you have in mind we are satisfied at any and all times to market our output at prices equal to those of the Standard Sanitary Mfg. Company.

Very truly yours,
J. M. KOHLER SONS CO.,
per—
Pres.

WJK-W

PETITIONER'S EXHIBIT No. 49.

Filed Nov. 1, 1910

Feb. 12, 1910.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

I am pleased to acknowledge receipt of your letter of the 10th with reference to Re-sale Prices and License Agreement.

I do not know how this matter is going to work out, but your letter leads me to believe that if something along these lines can be worked out that will be legitimate and worth while that I can count on your cooperation.

Yours very truly,
E. L. WAYMAN, *Commissioner.*

June 28, 1910

1 PETITIONER'S EXHIBIT No. 50.

Filed Nov. 1, 1910

Feb. 14, 1910.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear sir:—

Resale Price and License Arrangement.

2 Answering yours of the 12th, as you know, from repeated conferences and some correspondence had with us, we are not very enthusiastic about the license arrangement and will not commit ourselves at present to the statement that we will join if it is formed. In our letter of the 14th we intimated that if a license arrangement was worked out and we decided at that time to become parties to this agreement, or to cooperate as outsiders, that we would in that event be satisfied to sell our goods on the same basis as the Standard Sanitary Mfg. Company.

Yours very truly,
J. M. KOHLER SONS CO.
per—

3 *Pres.*

WJK-W

4

PETITIONER'S EXHIBIT No. 51.

Filed Nov. 1, 1910

....

Feb. 25. 1910.

Mr. W. J. Kohler,
c/o J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear sir:—

Can you attend a meeting next Wednesday morning at Chicago of the companies to whom this letter is addressed for the purpose of trying to arrive at some definite recommendations to be made to the Special Meeting of all the Companies which is to be called the first part of next month at New York regarding Licenses and Re-sale prices?

The market conditions are such that this matter ought to be settled without further delay and I would thank you to telegraph me not later than Monday if you can attend.

Yours very truly,

E. L. WAYMAN,
Commissioner.

Copies to

H. M. Hoelscher	L. Wolff Mfg. Co.
F. J. Torrance	Standard Sanitary Mfg. Co.
A. H. Cline, Jr.	U. S. Sanitary Mfg. Co.
W. J. Kohler	J. M. Kohler Sons Co.
H. T. Gates	McCrum-Howell Co.
J. B. Murphy	J. M. Kohler Sons Co.

1 PETITIONER'S EXHIBIT No. 52.

Filed Nov. 1, 1910.

March 16, 1910.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

I enlose copy of Memorandum of Agreement which has been signed by the following Companies that I have had the
2 opportunity of seeing—

The McCrum-Howell Co.,
Blairsville Enameled Ware Co.,
National Sanitary Mfg. Co.,
The Barnes Mfg. Co.,
Standard Sanitary Mfg. Co.,
L. Wolff Mfg. Co.,
United States Sanitary Mfg. Co.,
A. Weiskittel & Son Co.,
The Humpharyes Mfg. Co.,
Union Sanitary Mfg. Co.

3

4

PETITIONER'S EXHIBIT No. 53. 1

Filed Nov. 1, 1910.

March 21, 1910.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir:—

We have your letter of March 16th. with enclosed copy of tentative agreement entered into by certain manufacturers regarding license arrangement and re-sale prices. We have taken this question up with competent counsel, who 2
advise that it is openly a price agreement and there is no question in his mind that it would be so considered, and is therefore in conflict with the laws of Wisconsin. Under the circumstances we do not feel that we are in a position to enter into this agreement, although if a satisfactory arrangement can be worked out whereby we co-operate with your association we would do so.

Very truly yours,
(Signed) J. M. KOHLER SONS CO.,
per—

WJK-D *Pres.* 3

4

1

PETITIONER'S EXHIBIT No. 52.

Filed Nov. 1, 1910.

March 16, 1910.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

I enlose copy of Memorandum of Agreement which has been signed by the following Companies that I have had the
2 opportunity of seeing—

The McCrum-Howell Co.,
Blairsville Enameled Ware Co.,
National Sanitary Mfg. Co.,
The Barnes Mfg. Co.,
Standard Sanitary Mfg. Co.,
L. Wolff Mfg. Co.,
United States Sanitary Mfg. Co.,
A. Weiskittel & Son Co.,
The Humphryes Mfg. Co.,
Union Sanitary Mfg. Co.

3

4

PETITIONER'S EXHIBIT No. 53.

Filed Nov. 1, 1910.

March 21, 1910.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir:—

We have your letter of March 16th. with enclosed copy of tentative agreement entered into by certain manufacturers regarding license arrangement and re-sale prices. We have taken this question up with competent counsel, who advise that it is openly a price agreement and there is no question in his mind that it would be so considered, and is therefore in conflict with the laws of Wisconsin. Under the circumstances we do not feel that we are in a position to enter into this agreement, although if a satisfactory arrangement can be worked out whereby we co-operate with your association we would do so.

Very truly yours,
(Signed) J. M. KOHLER SONS CO.,
per—

WJK-D *Pres.*

1 PETITIONER'S EXHIBIT No. 54.

Filed Nov. 1, 1910.

March 23, 1910.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

There will be a special meeting of the Manufacturers for the purpose of entering into a License Agreement covering
2 the Manufacture of Sanitary Iron Enameled Ware at the Hotel Astor, New York City, beginning at 10:30 A.M. Tuesday morning, March 29th., and concluding probably the 30th.

The Hotel Management has placed at our disposal two Committee Rooms on the 8th floor free of charge, in consideration of which I would suggest that you stop at the "Astor" if possible.

Tomorrow I will send you copies of the License Agreement and the Jobbers' Agreement, etc. The entire matter together with the wording of the contracts has been passed
3 on by competent counsel.

Please come to the meeting prepared to file your "Future Delivery Orders."

Please advise if you will attend.

Yours very truly,
(signed) E. L. WAYMAN.

4

PETITIONER'S EXHIBIT No. 55.

Filed Nov. 1, 1910.

March 29, 1910.

Telegram.

W. J. Kohler,
c/o J. M. Kohler Sons Co.

All manufacturers except you and Weiskittel represented at meeting. Weiskittel here to-night. 15 members here in person, balance by letter and wire. After a thorough consultation with attorney Jackson of Noble, Jackson & Hubbard we are all satisfied entire proposition is absolutely legal and more feasible and easier to handle than electrical proposition which has been in force several years. Sense of meeting favorable to license agreement and re-sale proposition. 91% of production voting favorable, some await consultation and consent of their associates or counsel. Members desire your wire time for tomorrow's meeting called for 10 A.M.

E. L. WAYMAN.

1

PETITIONER'S EXHIBIT No. 56.

Filed Nov. 2, 1910.

June 28, 1910.

Mar. 29, 1910.

Telegram.
Night Letter.

Mr. E. L. Wayman,
Hotel Astor,
New York.

2

You know our position on this question at present. Due to absence of counsel from city, we will not commit ourselves further on proposition now. If you will submit to us papers adopted at your meeting we will give matter further consideration.

(signed) WALTER J. KOHLER.

Pd.

3

PETITIONER'S EXHIBIT No. 57.

Filed Nov. 2, 1910.

Mar 31, 1910.

Telegram.

Walter J. Kohler:—

4

Matter shaped up here today and signed. Members pleased at your reply, as we can satisfy you legal end. Will you meet me Chicago or Sheboygan Saturday? Will submit brief and court decision. Would mail papers but cannot do so. Wire appointment to Pittsburg.

E. L. WAYMAN.
(Night Letter).

Pd.

PETITIONER'S EXHIBIT No. 58.

Filed Nov. 2, 1910.

Mar. 31, 1910.

Telegram.

E. L. Wayman
1509 Arrott Bldg.,
Pittsburg, Pa.

Our attorney will not be home before 7th. However, if you desire, can meet you at our Chicago office at nine Saturday morning, second, to discuss matters.
Pd. WALTER J. KOHLER.

PETITIONER'S EXHIBIT No. 59.

Filed Nov. 2, 1910.

Mar. 31, 1910.

Walter J. Kohler—

Will meet you 9 A.M. Saturday at your Chicago office.
Pd. (signed) E. L. WAYMAN.

1

PETITIONER'S EXHIBIT No. 63.

Filed Nov. 2, 1910.

April 29, 1910.

Mr. E. L. Wayman,
Pittsburgh, Pa.

Dear Sir:—

Answering yours of April the 27th. Our Company is incorporated under the state laws of Wisconsin. As advised you sometime ago, we will not enter into a license
2 agreement and therefor will not be represented at the meeting in New York next week.

Very truly yours,
J. M. KOHLER SONS CO.,
per—

Pres.

3

PETITIONER'S EXHIBIT No. 64.

Filed Nov. 2, 1910.

May 2, 1910.

Dear Mr. Kohler:—

Notwithstanding your recent letters, I am enclosing you copies of the final forms for your perusal. I sincerely hope that you and Mr. Murphy will at least attend the meeting to be held at New York Friday.

4 With kindest regards, I am,

Yours very truly,
(Signed) E. L. WAYMAN.

PETITIONER'S EXHIBIT No. 65.

Filed Nov. 2, 1910.

Mr. Frank S. Hanley, Dec. 7th, 1909
261 Broadway,
New York. *Personal*

Dear sir:—

Replying to your recent letters with reference to the Manufacturers selling concerns who did not come within the definition of a Jobber as defined by the National Trade Resolutions.

At the meetings of the Manufacturers' held Nov. 30th and Dec. 1st, the question of the policy of the Manufacturers selling concerns who in turn did not confine their sales through the recognized trade channels, i. e., through the Plumber and not direct to the Consumer, was discussed. No concerted action on this matter was taken, but each Manufacturer present expressed himself to the effect that in the future he would confine his sales to such Companies that came within the definition of a Jobber or Plumber as defined by the National Trade Resolutions and that he would individually *refuse to sell Jobbers* who in turn did not confine their sales through the recognized trade channels.

This individual expression was given with the understanding that the Manufacturers would receive support from the Jobbers in this matter. No concerted action on this matter was taken for reasons which you well know.

Attention was called to the fact that the Manufacturers had come in contact with several instances in which the Jobbers were doing the very thing they have been asking the Manufacturers not to do.

The Manufacturers, desire to receive assurances that the Jobbers will do their part in supporting them in bringing about a better condition of affairs in this respect.

In view of all the efforts that have been made to get the Manufacturers unto this frame of mind, the Jobbers should consider this matter seriously, as it is undoubtedly the best opportunity that has been presented to them to cooperate with the Manufacturers and eliminate the possibility of illegitimate concerns securing goods.

Will you be kind enough to take this up through the proper channels and let me hear from you?

Yours very truly,

PETITIONER'S EXHIBIT No. 66.

Filed Nov. 2, 1910.

ASSESSMENT FOR YEAR BEGINNING AUGUST 5TH, 1909.
" " " " FEBRUARY 5TH, 1910.

			Quarter.	
Blairsville Enameled Ware Co.	$ 150.00	$ 225.00	$ 37.50	$ 56.25
Barnes Mfg. Co., The	200.00	300.00	50.00	75.00
Cahill Iron Works, The	400.00	600.00	100.00	150.00
Colwell Lead Co.	150.00	225.00	37.50	56.25
Clymer Mfg. Co.	150.00	225.00	37.50	37.50
Day-Ward Co., The	300.00	450.00	75.00	112.50
Humphryes Mfg. Co.	300.00	450.00	75.00	112.50
Iron City Sanitary Mfg. Co.	500.00	750.00	125.00	187.50
Kohler Sons Co., J. M.	500.00	750.00	125.00	187.50
Mott Iron Works, J. L.	300.00	450.00	75.00	112.50
McVay & Walker	200.00	300.00	50.00	75.00
McCrum-Howell Co.	300.00	450.00	75.00	112.50
National Sanitary Mfg. Co.	300.00	450.00	75.00	112.50
Standard Sanitary Mfg. Co.	2700.00	4050.00	675.00	1012.50
Union Sanitary Mfg. Co.	300.00	450.00	75.00	112.50
United States Sanitary Mfg. Co.	500.00	750.00	125.00	187.50
Wolff Mfg. Co., L.	750.00	1125.00	187.50	281 25
Weiskittel & Son, A.	300.00	450.00	75.00	112.50
Wheeling Enameled Iron Co.	200.00	300.00	50.00	75.00
	$8500.00	$12750.00		$3187.50

PETITIONER'S EXHIBIT No. 67.

Filed Nov. 2, 1910.

AGREEMENT

This Agreement made this 5th day of May, 1910, by and between EDWIN L. WAYMAN, of Pittsburg, Allegheny County, Pennsylvania, party of the first part, and the J. L. Mott Iron Works, a corporation organized and existing under the laws of the State of New York, having a place of business at the City, County and State of New York, party of the second part,

WITNESSETH: That whereas the party of the second part is the owner of the entire right, title and interest in and to the following Letters Patent, viz:

Pat. No.	*Date*	*Inventor*	*Title*
949,625	Feb. 15th, 1910	E. Ditheridge..	Pneumatic Sieve

AND WHEREAS the party of the first part desires to secure the exclusive right, title and interest in and to said letters Patent and inventions:

NOW, THEREFORE, be it known that the parties have agreed as follows:

First. The party of the second part hereby agrees that it will assign, sell and set over unto the party of the first part, its entire right, title and interest in and to said letters Patent and inventions, for and in consideration of a cash payment by the party of the first part, to be hereafter agreed upon, and for and in consideration of the following covenant on the part of the party of the first part.

Second. The party of the first part, for and in consideration of the said assignment, agrees that the party of the second part shall, at any time after the expiration of two years from the date hereof, have the right to request, if it shall so desire, a reassignment to it of the said patent; and further agrees if at any time after the expiration of the said period, the party of the second part shall request such reassignment, that he will at once, and without further consideration, execute and deliver any and all papers necessary to effect such reassignment.

IN WITNESS WHEREOF, the party of the first part has affixed his hand and seal the day and year first above

written, and the party of the second part has caused these presents to be executed by its Secretary.

(signed) EDWIN L. WAYMAN [SEAL.]
(signed) THE J. L. MOTT IRON WORKS,
MAX GOEBEL, *Secretary.*

In presence of
WILLIAM J. J. BOWMAN
(signed)

2—392.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

Received and Recorded on the 2nd day of June, 1910, in Liber M, 84, page 269 of Transfers of Patents.

IN TESTIMONY WHEREOF, I have caused the [SEAL.] seal of the Patent Office to be hereunto affixed.

(Signed) E. B. MOORE,
Commissioner of Patents.

Ex'd.
E.H.C.

PETITIONER'S EXHIBIT No. 68.

Filed Nov. 2, 1910.

ASSIGNMENT.

WHEREAS, The J. L. Mott Iron Works, a corporation organized and existing under the laws of the State of New York, and having a place of business at the City of New York, County and State of New York, is the owner of all the right, title and interest in and to the following Letters Patent, viz:

Pat. No.	*Date*	*Inventor*	*Title*
949,625	Feb. 15th, 1910	E. Dithridge.	Pneumatic Sieve.

AND WHEREAS, Edwin L. Wayman, a resident of Pittsburg, Allegheny County, desires to acquire all right, title and interest in and to said patent, and in and to the invention covered, or intended to be covered, thereby:

NOW, THEREFORE, be it known, that for and in consideration of the sum of *Five hundred Dollars* by the said Edwin L. Wayman in hand paid, the receipt of which is hereby acknowledged, The J. L. Mott Iron Works aforesaid has assigned, sold and transferred, and by these presents does assign, sell and transfer, unto the said Edwin L. Wayman, the entire right, title and interest in and to said Letters Patent and invention, the same to be held and enjoyed by the said Edwin L. Wayman, his heirs, executors, administrators and assigns, as fully and completely as the same would have been held and enjoyed by said The J. L. Mott Iron Works had this sale and assignment not been made.

IN WITNESS WHEREOF, The J. L. Mott Iron Works has caused these presents to be signed by its Secretary this fifth day of May 1910.

THE J. L. MOTT IRON WORKS. [SEAL.]

MAX GOEBEL,
Secretary.

In presence of
W. J. J. BOWMAN

1 State of New York
City and County of New York. } ss.:

Before me, a Notary Public for said County, personally appeared Max Goebel, known to me to be the Secretary of The J. L. Mott Iron Works and the person who executed the foregoing instrument on behalf of said Company, and acknowledged the same to be the act and deed of said Company.

WITNESS my hand and seal this 5th day of May 1910.

CHAS. BANNENMULLER

[SEAL.] *Notary Public, New York County.*

2

My Commission Expires March 31st, 1911.

3

4

PETITIONER'S EXHIBIT No. 69.

Filed Nov. 2, 1910.

AGREEMENT.

This Agreement made this 4th day of May, 1910 by and between EDWIN L. WAYMAN, of Pittsburgh, Allegheny County, Pennsylvania, party of the first part, and the L. Wolff Manufacturing Company, a corporation organized and existing under the laws of the State of Illinois, having a place of business at Chicago, Cook County, State of Illinois, party of the second part,

WITNESSETH: That whereas the party of the second part is the owner of the entire right, title and interest in and to the following Letters Patent, viz:

Pat. No.	*Date*	*Inventor*	*Title*
939,918	Nov. 9th, 1909	William Lindsay	Enameling Powder Distributor.

AND WHEREAS the party of the first part desires to secure the exclusive right, title and interest in and to said Letters Patent and inventions.

NOW, THEREFORE, be it known that the parties have agreed as follows:

First. The party of the second part hereby agrees that it will assign, sell and set over unto the party of the first part, its entire right, title and interest in and to said Letters Patent and inventions, for and in consideration of a cash payment by the party of the first part, to be hereafter agreed upon, and for and in consideration of the following covenant on the party of the first part.

Second. The party of the first part, for and in consideration of the said assignment agrees that the party of the second part shall, at the expiration of two years from the date thereof, have the right to request, if it shall so desire, a reassignment to it of the said patent; and further agrees if at any time after the expiration of the said period, the party of the second part shall request such reassignment that he will at once, and without further consideration, execute and deliver any and all papers necessary to effect such reassignment.

IN WITNESS WHEREOF, the party of the first part has

affixed his hand and seal the day and year first above written, and the party of the second part has caused these presents to be executed by its Vice President and attested by its Secretary.

EDWIN L. WAYMAN [SEAL.]
L. WOLFF MFG. CO.
By JNO. CLIFFORD, *V. P.*

Attest:
HERMAN M. HOELSCHER
Secretary.

2—392,

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE.

RECEIVED and RECORDED on the 21st. day of June 1910 in Liber Y, 84, page 125 of Transfers of Patents,

IN TESTIMONY WHEREOF, I have caused the seal [SEAL.] of the Patent Office to be hereunto affixed.

Exd.
E. H. G.

(Signed) E. B. MOORE,
Commissioner of Patents

PETITIONER'S EXHIBIT No. 70.

Filed Nov. 2, 1910.

ASSIGNMENT.

WHEREAS, the L. Wolff Manufacturing Company, a corporation organized and existing under the laws of the State of Illinois, and having a place of business at Chicago, Cook County, Illinois, is the owner of all the right, title and interest in and to the following Letters Patent, viz:

Pat. No.	*Date*	*Inventor*	*Title*
939,918	Nov. 19th, 1909	William Lindsay	Enameling Powder Distributor.

AND WHEREAS, Edwin L. Wayman, a resident of Pittsburg, State of Pennsylvania, desires to acquire all right, title and interest in and to said patent, and in and to the invention covered, or intended to be covered, thereby;

NOW, THEREFORE, be it known, that for and in consideration of the sum of Five Hundred ($500.00) Dollars by the said Edwin L. Wayman in hand paid, the receipt of which is hereby acknowledged, the L. Wolff Manufacturing Company aforesaid has assigned, sold and transferred, and by these presents does assign, sell and transfer, unto the said Edwin L. Wayman, the entire right, title and interest in and to said Letters Patent and invention, the same to be held and enjoyed by the said Edwin L. Wayman, his heirs, executors, administrators and assigns, as fully and completely as the same would have been held and enjoyed by the said L. Wolff Manufacturing Company had this sale and assignment not been made.

IN WITNESS WHEREOF, the L. Wolff Manufacturing Company has caused these presents to be signed by its and attested by its Secretary, this Fourth day of May, 1910.

(Signed) L. WOLFF MFG. CO.
by JNO. CLIFFORD
Vice-President.

Attest:
HERMAN M. HOELSCHER
Secretary.

State of Illinois, } ss.:
County of Cook. }

Before me, a Notary Public for said County, personally appeared John Clifford, known to me to be the Vice-President of the L. Wolff Manufacturing Company and the person who executed the foregoing instrument on behalf of said Company, and acknowledged the same to be the act and deed of said Company.

WITNESS my hand and seal May 4, 1910.

HAMILTON MOSES,
Notary Public.

PETITIONER'S EXHIBIT No. 71. 1

Filed Nov. 2, 1910.

Do not write regarding more than one subject on this sheet.

THE CAHILL IRON WORKS
Chattanooga, Tenn.

SUBJECT May 5, 1910.

To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburg, Pa.

2

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir:—

We wrote you on yesterday, sending same by special delivery, c/o Noble, Jackson & Hubbard, Attorneys, New York; you gave no street number, but presume the letter reached you, or rather that it will reach you to-morrow morning when you are expected to be in New York. This letter states that at the present time indications were more favorable than they had been previously, as to our going 3
into the arrangement, but that we could not say positively for a little while yet just what we would do.

In the meantime there are a few questions we would like to ask:

First of all, we understand that we are to make reports to Noble, Jackson & Hubbard's office, or whomever the Commissions may be, of every sale of enamel ware we make. We wish to ask whether these reports will be open to our competitors, and can they get a list of our customers, and find out just what class of goods they are getting from us? This would be quite a serious objection. We do 4
not see why this would be necessary, and it seems to us that the Commissioners themselves could keep such information as that confidential, so far as competitive factories are concerned. There are other matters upon which we must be advised from time to time, but will try to take them up a little later. Could you advise us on the above point at once?

Another matter that occurred to us, was this: You say that no B grades are to be sold. Supposing at a very long

distance from home, say for instance, in Utah, Colorado, or some far away point, some jobber gets some of our goods that prove defective, we, of course, will be allowed to adjust that matter by making a proper reduction so that the goods will not have to be returned to the factory from such a long distance. Has this matter been arranged for?

Trusting to hear from you in regard to the above at your first convenience, we are,

Yours very truly,
THE CAHILL IRON WORKS,
Per F. H. CALDWELL, (Signed)
Prest.

FHC-C

PETITIONER'S EXHIBIT No. 72.

Filed Nov. 2, 1910.

Telegram.

May 6, 1910.
Hotel Manhattan, N. Y.

Chattanooga, Tenn.
E. L. Wayman, N. Y.

Everything favorable. Can answer positive one week.
F. H. CALDWELL.

1 PETITIONER'S EXHIBIT No. 73.

Filed Nov. 2, 1910.

Established 1875

THE CAHILL IRON WORKS
Manufacturers of
PLUMBERS' PORCELAIN ENAMELED CAST IRON WARE
"SOUTHERN BEAUTY"

Lavatories, one-piece roll rim and apron sinks etc.

2 Factory, corner Boyce & 13th Sts.

Main Office and salesrooms, corner Boyce & 13th Sts.

Cable Address "CAHILL" Chattanooga.

Eastern Branch
No. 76 West 36th St. Chattanooga, Tenn, U. S. A.
New York City. May 7, 1910.

Mr. E. L. Wayman,
Pittsburg, Pa.

3 Dear Sir:—

Your two telegrams received, the first one reading as follows:

> "License matter will be concluded tomorrow shall I include your goods in price list now in printers hands if you are withholding answer on account of patents you expect to issue to your company will say I will pay you for patents on same basis I have purchased others from Standard, Wolff and Mott, wire answer Manhattan Hotel".

4 The second one:

> "Your letter and telegram favorably received licenses executed this morning mailing yours."

Of course you had my reply to your first telegram, which was that I could not positively decide, but indications were favorable. This is all I can add at this time. I am sure all the gentlemen connected, yourself included, will say that I have been perfectly consistent up to this time. I am perfectly candid when I say, that while I see

quite a great many objections, which I suppose all the other gentlemen do, at the same time, there are objections in remaining on the outside and acting, to a certain extent, in the shape of an obstructionist. This we do not want to do, if we can prevent it. At the same time, there is still one obstacle to be overcome; how this will terminate we cannot say. If it is insurmountable, and we have to tell you that it is impossible for us to co-operate and be one of you you must not, and we do not believe can, consistently blame me. 1

As soon as I know whether we can join, then, of course, I will get all the information obtainable to determine fully what to do. No doubt you have all the plans, either in printed form or in such form as you can send it to me. I will be glad for you to mail this to me upon receipt of this letter. 2

You refer in your telegram to certain patents, on a dredger, which I will be pleased to take up with you. Of course it is not a question of money with us that we are trying to "hold anybody up" or anything of the kind, but I feel satisfied we have some very decided advantages on that line that are not known to our competitors generally. Our Company wants to be perfectly reasonable in regard to these matters, and will be ready to take them up with you just as soon as the remaining party, referred to in our telegram this morning, reports. 3

You certainly deserve credit for the persistency with which you have pushed this matter, and I can say very freely that you deserve success in any event.

Very respectfully,

F. H. CALDWELL. (Signed).

4

1 **PETITIONER'S EXHIBIT No. 78.**

Filed Nov. 2, 1910.

COPY

Do not write regarding more than one subject on this sheet.

THE DAY-WARD CO.

Warren, Ohio, Jan. 11th, 1910.

To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

SUBJECT.

2 Dear Sir:—

The writer has gone into the question of the proposed Agreement for Licensed Manufacturers quite carefully, and has obtained some advice on same.

We are advised that this is legal, and there is no question but what it can be carried through all right. There are some questions, however, that would have to be settled, viz: the schedules and the differential in prices which would be allowed the different manufacturers. This, we suppose could be arranged satisfactorily to all parties concerned.

3 There is one other part also which has not been touched upon, and which we think is very necessary, and that is the question of re-sale prices, the prices at which this material should be sold by the jobber to the plumber. These could be taken up and carried out.

Aside from this, however, we would not care to have anything to do with it unless all the manufacturers of enameled ware were parties to the agreement. This, of course, includes The Standard Sanitary Mfg. Co. If they do not see their way clear to go into it, we think it would be better to let the matter drop.

4 Yours truly,

THE DAY-WARD CO.

Per A. G. WARD,

W/F. F.

PETITIONER'S EXHIBIT No. 79.

Filed Nov. 2, 1910.

COPY

W-1121004-I
Jan. 12th, 1910.

Mr. A. G. Ward,
c/o The Day-Ward Co.,
Warren, Ohio.

Dear Sir:—

Replying to your letter of the 11th with reference to License Arrangement would state that most of the Companies are favorable to the matter on the same basis as you are, i. e., provided the Standard Sanitary Mfg. Company becomes a party to the Arrangement.

Since writing you I have been to Louisville where I took the matter up with Mr. Ahrens and Mr. Dawes. The matter appeals to them in several ways and while they have not given me any definite answer, I believe it strikes them quite favorably. I had in mind the re-sale price feature and am preparing some papers with reference to this end of it so that when the matter is taken up I will have ready considerable information and data with reference to it.

I think the question of differentials in prices among the Manufacturers can be arranged satisfactorily to all parties concerned provided it is decided to go ahead with the matter.

Yours very truly,

PETITIONER'S EXHIBIT No. 80.

Filed Nov. 2, 1910.

Do not write regarding more than one subject on this sheet.

THE DAY-WARD CO.
Warren, Ohio.

March 12th, 1910

SUBJECT

To E. L. WAYMAN,
1509 Arrott Building,
Pittsburgh, Pa.

Dear Sir:—

Your letter of March 9th enclosing memorandum agreement arrived during the writer's absence. Would say that we will look this over. It has a great many good points, and we see no reason why this could not be drafted up and made to work satisfactorily.

There is one point which has been left out, which the writer deems most important. That is the question of the orders which the manufacturers have on their books at present.

Would say it will not be necessary for you to come to see the writer any particular time, but if you are in this part of the country, we wish you would stop off, as there are several matters which we would like to talk over with you personally.

Yours truly,
The DAY-WARD COMPANY
Per A. G. WARD (Signed)

W/F

PETITIONER'S EXHIBIT No. 81. 1

Filed Nov. 2, 1910.

COPY

W-3151007-I
March 15th, 1910

Mr. A. G. Ward,
c/o The Day-Ward Co.,
Warren, Ohio.

Dear Sir:—

Replying to your letter of the 12th, I have secured the following signatures to the Memorandum of Agreement: 2

The McCrum-Howell Co.
Blairsville Enameled Ware Co.
National Sanitary Mfg. Co.
The Barnes Mfg. Co.
Standard Sanitary Mfg. Co.
L. Wolff Mfg. Co.
United States Sanitary Mfg. Co.
A. Weiskittel & Son Co.
The Humphreyes Mfg. Co.
Union Sanitary Mfg. Co. 3

I think the matter is now an assured success and I will arrange to see you sometime the latter part of this week or possibly before that. I will phone you before hand so as to make sure that you are there.

Yours very truly,

4

1 PETITIONER'S EXHIBIT No. 82.

Filed Nov. 2, 1910.

W-471005-I

April 7th, 1910

Mr. A. G. Ward,
c/o Ward-Day Co.,
Warren, Ohio.

Dear Sir:—

2 Replying to your letter of the 6th would state that the Committee will start its session tomorrow at the Colonial Hotel, Mt. Clemens, Mich. If you think it advisable I am sure they would be glad to have you present to take up the matter in person. Your letter, however, is pretty clear on the matters you want and should any difficulties develop I will be glad to invite you to come to Mt. Clemens, if necessary.

Yours very truly,

3

PETITIONER'S EXHIBIT No. 83.

Filed Nov. 2, 1910.

Copy.

W-4191001-I.

April 19th, 1910.

Mr. A. G. Ward,
4 c/o The Day-Ward Co.,
Warren, Ohio.

Dear Sir:—

Replying to your letter of the 18th would state that Mr. Weiskittel and Mr. Gates appeared before the Committee and signed the Agreement.

Mr. Kohler advised me that after a consultation with his attorney that he will not become a part yto the arrangement.

Yours very truly,

PETITIONER'S EXHIBIT No. 84. 1

Filed Nov. 2, 1910.

Copy.

THE DAY-WARD CO.

WARREN, OHIO, April 21, 1910.

To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburg, Pa.

Dear Sir:— 2

We are returning communication from The McCrum-Howell Co. in regard to Hoy & Co.

In regard to your letter W-4191001-I, would say we are very much disappointed that Kohler will not be a party to the agreement. We think we could get along without either Kohler or Iron City, but think it would be a great mistake to leave both of them out. Of the two we would prefer to see Kohler in.

Yours truly,
THE DAY-WARD CO.
Per A. G. WARD. 3

W/F

4

1 PETITIONER'S EXHIBIT No. 85.

Filed Nov. 2, 1910.

Do not write regarding more than one subject on this sheet.

THE DAY-WARD CO.

Warren, Ohio.

May 12th, 1910.

SUBJECT.

To E. L. Wayman,
2 1509 Arrott Bldg.,
Pittsburgh, Pa.

Dear Sir:—

Will you kindly send the writer the list of the Manufacturers of Enameled Ware who have signed the resale agreement, and also the exact percentage of output as represented by them.

Also advise whether or not any progress is being made toward getting the signatures of those who did not sign at the New York meeting.

3 Yours truly,

THE DAY-WARD CO.

W/F

4

PETITIONER'S EXHIBIT No. 86. 1

Filed Nov. 2, 1910.

W-5161001-I

May 16th, 1910.

Mr. A. G. Ward,
c/o The Day-Ward Co.,
Warren, Ohio.

Dear Sir:—

Replying to your letter of the 12th. would state that I have received word from the Cahill Iron Works to meet them in Chattanooga with reference to signing up. The Blairsville Company advise that they will have a representative here to-morrow regarding the matter and I understand that the Iron City Company has told several of their large jobbers that they will enter into the arrangement if they say the word. I understand that they are saying it to them from all directions, and I have no doubt but that they will come along. 2

Mr. Ahrens and Mr. Torrance saw Mr. Murphy and Mr. Kohler at Chicago Saturday, but did not obtain much satisfaction. Mr. Ahrens is still on the job and will return to-morrow, at which time I will write you further. 3

Yours very truly,

4

1 PETITIONER'S EXHIBIT No. 87.

Filed Nov. 2, 1910.

Do not write regarding more than one subject on this sheet.

McCRUM-HOWELL Co.

New York City.

February 14th, 1910.

SUBJECT "Resale Prices and Licensee Arrangement."

2 To E. L. WAYMAN,
1509 Arrott Bldg.,
Pittsburg, Pa.

Your letter of February 7th. received. We have no design patents, which I take it is what you want. We have some shop patents, however, if you want patents of that kind.

Regarding the differential to be used over Standard's published prices, would suggest 5% on the regular guaranteed label goods—this to include schedule #1 and #3, and 2½% on the Red and Black Label tubs. We will probably
3 operate eight furnaces the balance of the year.

This answers your letter of the 11th. as well.

Yours very truly,

HOWARD T. GATES,
Secretary.

HTG/EMT

4

PETITIONER'S EXHIBIT No. 88. 1

Filed Nov. 2, 1910.

COPY

Do not write regarding more than one subject on this sheet.

THE J. L. MOTT IRON WORKS

NEW YORK CITY

January 10, 1910.

SUBJECT: PRICES AND LEGAL ARRANGEMENT 2

To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir:—

Since receiving yours of the 31st ult. the writer has been looking for the copy of the proposed Legal Arrangement that you sent sometime ago but it must be mislaid. Will you kindly send another copy? 3

Yours very truly,
THE J. L. MOTT IRON WORKS,
E. HAMMANN.

EH/AS

4

GOVERNMENT'S EXHIBIT 89.

PETITIONER'S EXHIBIT No. 89.

Filed Nov. 2, 1910.

W-1121003-1

January 12th, 1910.

Mr. Edward Hammann,
c/o J. L. Mott Iron Works,
New York City.

Dear Sir:—

Replying to your letter of the 10th. I enclose you a duplicate memorandum of the papers that were forwarded to you. This is being considered favorably by the majority of the companies and I would be glad to have your criticisms and suggestions as soon as practicable.

The papers I am sending you will undoubtedly be subject to changes, but the idea in the main is given therein. The proposition would have to embody a resale price to the plumber to make it complete.

Yours very truly,

PETITIONER'S EXHIBIT No. 90.

Filed Nov. 2, 1910.

April 29th, 1910.

Mr. E. Hammann,
c/o J. L. Mott Iron Works,
New York City.

Dear Sir:—

I have been unable to tell from your catalogue, what the list prices are without fittings. We are now making up the Price List on Licensed Ware and will you please have sent to me not later than the first of the week, the following information on *all* your Enameled Iron Ware.

List Price		Same as
Mott Plate No.	*Without fittings.*	*Standard Plate No.*

Also in addition to the above information please include in your statement the *width of the* Rims of your various makes of Enameled Iron Baths.

Will you kindly put some one on this job so that I can have the information by the time asked for? I am sorry I could not have given you more notice.

Thanking you in advance, I am,

Yours very truly,

1 **PETITIONER'S EXHIBIT No. 91.**

Filed Nov. 2, 1910.

On train near El Paso, May 7th, 1910.

Mr. E. L. Wayman,
Pittsburg,

Dear Sir:—

By this time I trust your long siege is over and that at your meeting in N. Y. this week final arrangements were consummated—sorry I could not be present.

2 I will be in Old Mexico for about ten days and when I come out I will want to know what is going on in our bus. world. Will you kindly send me, Care Higgins Co., San Antonio, Texas, a copy of the Mfgs. Agreement (License) and the Jobbers Agreement with re-sale prices: I want to study them and issue the necessary bulletin to our branches and salesmen. Make my name on the envelope *very large* and plain so the H Co. will not open it by mistake: also put on the envelope "to arrive".

A letter from you telling the "news" and items of interest will be welcome.

3 Yours sincerely,

EDWARD HAMMANN.

4

PETITIONER'S EXHIBIT No. 92.

Filed Nov. 2, 1910.

May 10th, 1910.

Mr. Edward Hammann,
c/o Higgins & Co.,
San Antonio, Texas.

Dear Mr. Hammann:

I was very glad to receive your letter of the 7th. written on the train near El Paso.

We had our meeting, Friday of last week in the offices of Noble, Jackson & Hubbard, where we consummated the deal and signed the License Papers. Your company could not have a representative on hand but greatly facilitated matters by transferring the patents to me, the day previous to the meeting, as well as executing the License Agreement.

I enclose you copy of the License Agreement together with a copy of the Jobbers Agreement which may have some changes in it before it is finally issued. We think, possibly, that it might be well to have a meeting of all the salesmen sometime before the 1st. of June, so that they may thoroughly understand the matter in detail and be able to re-tell it to the jobbers in the manner it should be told.

We are now busy making up the Price List (I have six people besides myself working on it) and will be able to get everything out covering all the staples by June 1st. Sheets covering special material will follow as rapidly as possible.

We all missed you very much, but inasmuch as you were with us in spirit, it was some better than one or two people who were neither.

Every one feels very enthusiastic about the matter and I believe it will be a success.

As soon as you get time, I would appreciate a line from you.

Yours very truly,

PETITIONER'S EXHIBIT No. 93.

Filed Nov. 2, 1910.

ON TRAIN, MAY 21ST, 1910.

Dear Mr. Wayman:—

Many thanks for yours of the 10th. inst. and the copies of License & Jobbers Agreement.

The list of mfrs. in the Jobbers Agreement includes Kohler and Iron City, which means, I take it, that the united efforts to draw them into the fold were successful, if so Mr. Jackson will be quite satisfied with the percentage of mfrs. represented.

Discounts from resale prices—Why were these so materially reduced? Will the jobbers be content with 7½ and 5% and 5 & 5%?

Price list—The preparation of this must be a huge task. May I ask you to send me, as much before June 1st. as possible, a copy of the re-sale prices? I want to prepare our bulletin of instructions for branches and salesmen.

You refer to "a meeting of all the salesmen some time before June 1st." How comprehensive will this meeting be and where held?

I will be in Chicago Monday and Tuesday morning, c/o The J. L. Mott Iron Works, and in New York Wednesday.

Yours truly,

EDWARD HAMMANN.

PETITIONER'S EXHIBIT No. 94.

Filed Nov. 2, 1910.

W-5261002-I
May 26th, 1910.

Mr. Edward Hammann,
C/o J. L. Mott Iron Works,
New York, N. Y.

Dear Sir:—

Replying to that part of your letter of the 21st with reference to the margin of profit to the jobber. This figures from 17 to 21%, depending on the class of goods he purchases as well as the quality. Full information regarding all the details will be sent you the same time as it is sent to the other companies.

Yours very truly,

PETITIONER'S EXHIBIT No. 95.

Filed Nov. 2, 1910.

Telegram.
Postal Telegraph Commercial Cables.
Received at
236 Fourth Ave., Phone 407 Court.

137 G. W. 15. 45 lp.
New York May 19 '10.
E. L. Wayman,
1500 Arrott Bldg., Pgh—

Kindly mail special delivery our Boston New York and Phila. offices copies Jobbers agreement for Resale.

(Signed) FRANCIS J. TORRANCE.

1 PETITIONER'S EXHIBIT No. 96.

Filed Nov. 2, 1910.

W.-5191008-1
May 19th, 1910.

Standard

In reply to a telegraphic request from New York by Mr. Torrance I enclose you herewith copies in duplicate of the Jobbers' Agreement. I am unable to send you a copy that will be finally adopted as these will not be out until next week, but the final copy will be substantially the same as the
2 enclosed with some minor changes.

The amount of rebate based on purchases still has to be determined for the various quantities. In talking with any of the Jobbers please do not let these papers get out of your possession and return them to me as soon as you receive the revised copies. The discounts named on the first page have been reduced to 5%, inasmuch as this difference will exist in the Resale sheets between Carload and less than Carload Prices.

Yours very truly,

3

PETITIONER'S EXHIBIT No. 97.

Filed Nov. 2, 1910.

COPY.

Union Sanitary Mfg. Co.,
Noblesville, Ind.
Indianapolis, Ind., Feb. 12, 1910.

Mr. E. L. Wayman,
4 1509 Arrott Bldg.,
Pittsburgh, Pa.

Dear Sir:—

Have your favor of the 11th inst. and wish to say in reply thereto—no doubt Mr. Gates will take this matter up with you in reference to Patents and Preferential Discounts.

Hoping that this will be satisfactory, remain,

Yours very truly,

LCH. L. C. HUESMANN.

PETITIONER'S EXHIBIT No. 98.

Filed Nov. 2, 1910.

Union Sanitary Mfg. Co.,
Noblesville, Ind.

February 22, 1910.

Dear Sir:—

Referring to your favor of the 7th, will state that we have no patents that would be of any benefit to any one.

Regarding the preferential discount we are willing to secure the Standard Sanitary Mfg. Co.'s prices. Not their published prices but their actual prices on all ware.

We expect to operate six furnaces during this entire year. We are now using four.

Very truly yours,
UNION SANITARY MFG. CO.,
Per C. E. GATES,
2nd Vice-Pres. & Gen'l Mgr.

PETITIONER'S EXHIBIT No. 99.

Filed Nov. 2, 1910.

Circular

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-5111005-I

May 11th, 1910

Under your license you will be required after June 1st to place a Label on every piece of ware shipped out, which will read approximately as follows:

This fixture is manufactured under the following United States Letters Patent."

Date Serial Number.

Kindly advise me by return mail how many of these Labels you will want in your first supply. They will come in the shape of rolls and perforated so that they may be torn off like stamps.

Thanking you for a prompt reply, I am
Yours very truly,

1 PETITIONER'S EXHIBIT No. 100.

Filed Nov. 2, 1910.

(Copy)

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

Circular.

W-661011-I.

June 6th, 1910.

2 *To the Licensees*:

Kindly advise me if you have received your License Labels and if you are using them. These Labels should be on all Ware manufactured after June 1st.

Yours very truly,

Licensor.

3 PETITIONER'S EXHIBIT No. 101.

Filed Nov. 2, 1910.

(Copy)

W-5111001-I

May 11th, 1910.

Will you kindly advise me by return mail how many copies of the Resale Price Book you will require for your salesmen and office men. I will send from this office the
4 necessary copies to the Jobbers so that in naming your quantity, you need not take into consideration your customers requirements.

Yours very truly,

PETITIONER'S EXHIBIT No. 102.

Filed Nov. 2, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

Circular

W-5291003-I

May 29th, 1910.

Salesmen's Meeting

To the Licensees:

It was suggested sometime ago that just previous to the time that the Resale matter would take effect that there be held a General Meeting of the Manufacturers' Salesmen and the details thoroughly explained to them; lack of time has thus far prevented this.

In view of the fact that we now have an extra week's time, I would personally like to have the various Manufacturers' Salesmen meet me in Pittsburgh on Saturday, June 4th, for the following reasons.

It is almost impossible to thoroughly explain the matter to both Jobber and Salesman in any printed matter that may be issued. I have tried to cover all points in the printed matter I have prepared, but the salesmen will be undoubtedly asked a lot of questions that they should be able to answer in the proper way.

I have talked with several jobbers who were absolutely apposed to the proposition in general but after the matter was thoroughly explained to them they became very enthusiastic. I would, therefore, like to have the individual salesmen know the story from A to Z and be prepared to retell to their jobbers with a complete knowledge of the situation and in a convincing manner.

Most of the salesmen do not know each other and I believe if they did know each other it would help to promote better harmony and enable them collectively to present this

matter to the Jobbers in a better way than is possible under the present circumstances.

Will you kindly telegraph me upon receipt of this letter if you can have your salesmen in Pittsburgh Saturday so that I can make the proper arrangement to take care of them? Upon receipt of the replies, I will advise you definitely regarding the details.

Yours very truly,

Licensor.

PETITIONER'S EXHIBIT No. 103. 1

Filed Nov. 2, 1910.

EDWIN L. WAYMAN
ARROTT BUILDING
PITTSBURGH.

May 28th, 1910.

Mr. F. J. Torrance,
c/o Standard Sanitary Mfg. Co.
Pittsburgh, Penn'a.

To the Jobbing Trade: 2

Gentlemen:

Having acquired by purchase full ownership of the United States Letters Patent enumerated herein and being interested in maintaining the value of said Letters Patent, I have licensed the following manufacturers:

Barnes Mfg. Co., The	Mansfield, Ohio.
Cahill Iron Works, The	Chattanooga, Tenn.
Colwell Lead Co.	New York.
Day-Ward Co., The	Warren, Ohio. 3
Humphryes Mfg. Co., The	Mansfield, Ohio.
Kerner Mfg. Co.	Pittsburgh, Penn'a.
Mott Iron Works, The J. L.	New York City.
McVay & Walker	Braddock, Pa.
McCrum-Howell Co.	New York City.
National Sanitary Mfg. Co.	Salem, Ohio.
Standard Sanitary Mfg. Co.	Pittsburgh, Pa.
Union Sanitary Mfg. Co.	Noblesville, Ind.
U. S. Sanitary Mfg. Co.	Pittsburgh, Pa.
Wolff Mfg. Co., L.	Chicago, Ill.
Weiskittel & Son Co., A.	Baltimore, Md. 4
Wheeling Enameled Iron Co.	Wheeling, W. Va.

to practice in the manufacture of Sanitary Enameled Iron Ware the processes patented in said several Patents, to make and use in such manufacture, the machines and devices patented in said Patents and to use and sell goods so made on terms and conditions, the details of which I will send you on May 31st.

Schedule of Patents.

Pat. No.	*Date*	*Inventor*	*Title*
633,941	Sept. 26, 1899	James Arrott	Dredger for Pulverulent Material.
949,625	Feb. 15, 1910	E. Ditheridge	Pneumatic Sieve.
939,918	Nov. 9, 1909	Wm. Lindsay	Enameling Powder Distributor.

The Enameling Process Patents enumerated above cover substantially all the ways in which Sanitary Enameled Iron Ware may be enameled economically and with durability and are essential to the production of Ware of the highest quality.

The terms and conditions under which the various Companies have been licensed provide only a reasonable Manufacturer's profit and it will be the aim of the Licensed Manufacturers to give the ultimate consumer the benefits derived through improved manufacturing methods and equipment.

In behalf of the Licensed Manufacturers, I, therefore, ask your support in the effort to better conditions and to improve the general quality of Enameled Iron Ware, thereby increasing the use of the various licensed products to mutual advantage.

Yours very truly,

E. L. WAYMAN,
Licensor.

PETITIONER'S EXHIBIT No. 104. 1

Filed Nov. 2, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-529-1001-I

Mr. F. J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburgh, Penn'a.

May 29th, 1910.

To the Licensees:— 2

Attached find copy of letter I will issue Tuesday to the Jobbing Trade. The information contained therein is correct but in addition to this, I wish to advise you that considerable unexpected difficulty was experienced at the last moment in securing the co-operation of the Crane Company. This was finally accomplished and concluded yesterday by Mr. Ahrens of the Standard Sanitary Mfg. Co., who was delegated as a Committee of one to see them. It may be necessary to make some minor changes in the wording of the Jobbers' License Agreement and the Commission provided for in your License Agreement will take the matter 3 up next Wednesday at a Special Meeting. The final printed matter from a Resale basis, will, therefore, go into effect on June 6th, but you are hereby notified to withhold any billing on orders received from jobbers after June 1st, until you receive the printed matter referred to, as your License Agreement becomes effective June 1st.

The Jobbers' License Agreements will be forwarded to you by express on Friday, June 3rd and the Resale Price List on June 4th. Please make arrangements to forward the Jobbers' License Agreements to your Trade on the 4th, so that they will reach your customers on the 6th. The form 4 of letter to be sent with these contracts was outlined in my letter to you of May 25th.

Yours very truly,

E. L. WAYMAN,
Licensor.

1

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-5291002-I

May 29th, 1910.

(To be issued May 31st, 1910)

To the Jobbing Trade:

Referring to my letter of May 19th regarding the Resale Price List covering Licensed Sanitary Enameled Iron Ware
2 and my letter of the 28th, would state that it has developed at the last moment, owing to several changes and additions in the Price List, that it is a physical impossibility for the printer to complete the printed matter in the time contemplated.

This Price List will, therefore, become effective on the morning of June 6th and the printed matter will be in your hands on that date. I regret exceedingly the circumstances, but the fact that a Price List containing approximately 300 pages with over 35,000 discount calculations giving delivered prices at all Jobbing Points in every State and equalizing
3 rates to approximately 4,000 towns, has been compiled and printed in almost 4 weeks' time speaks for itself.

Yours very truly,

4

PETITIONER'S EXHIBIT No. 105.

Filed Nov. 2, 1910.

W-6101008-R.

June 10, 1910.

The Western Supply Co.,
St. Paul, Minn.

Gentlemen:—

Replying to your letter of the 7th, it is impossible for me to give you permission to continue buying goods from the J. M. Kohler Sons Co., Sheboygan, Wis. This Company has been invited to execute a license agreement and use the patents of process, but has not seen fit to do so. I would like to have them execute an agreement, but if they will not it is impossible to concede to any of their customers the right to purchase their goods if the customers desire to purchase licensed ware.

I hope that you will take the matter up with them and try and convince them that they should manufacture goods in accordance with the other Companies.

Yours very truly,

Licensor.

PETITIONER'S EXHIBIT No. 106.

Filed Nov. 2, 1910.

Pittsburgh, Pa.,

June 17th, 1910.

Atlas Supply Co.,
Muskogee, Okla.

If you will sign license agreement will authorize you to handle Kohler ware subject to resale terms for a reasonable length of time with understanding that you will at once decrease your purchases and stock licensed ware and further sale of it and furnish me monthly statement of purchases from Kohler. Licensed Manufacturers desire to give all assistance possible to jobbers in order that they may make a fair margin of profit and do not desire to inflict any hardships but do believe they merit the support of all jobbers in this proposition. Southwest, Kansas City Pump, Young and Crane are supporting Licensed Manufacturers. Reeves wires he has put resale into effect and intends to sign. Expect US Water will sign today. Wire answer.

(Signed) E. L. WAYMAN.

Charge to E. L. Wayman, 1302 Arrott Bldg.

PETITIONER'S EXHIBIT No. 107.

Filed Nov. 3, 1910.

W-6221021-I

June 22nd, 1910.

Atlas Supply Company,
Muskogee, Okla.

Gentlemen:—

Answering your letter of the 18th, would state that if you will sign the Jobbers' License Agreements, I will authorize you to continue purchasing Kohler's Ware as outlined in my telegram of the 17th, with the understanding that you maintain the Resale Prices. Will you kindly acknowledge receipt of this letter?

Yours very truly,

PETITIONER'S EXHIBIT NO. 108.

Filed Nov. 3, 1910.

"PROPOSED ARRANGEMENT FOR LICENSED MANUFACTURERS."

The execution of a Licensee Agreement with E. L. Wayman for the manufacture of Sanitary Enameled Iron Ware under patents owned by him covering Electric Dredgers, and under his right to grant Licenses for manufacturing Ware by Air Dredgers.

The manufacturers to be divided into three classes according to the proportion their business bears to the whole and to execute licenses to be known as follows and on the following terms.

Class A	Manufacturers	License	Royalty	$1500. per month.
Class B	"	"	"	1200. per month.
Class C	"	"	"	800. per month.

At the end of the third month the above royalties will be subject to 95% rebates if the terms of the license have been complied with and at the termination of each succeeding month a like rebate.

75% of the penalties deducted from the manufacturers violating agreement, to be divided among the Licensees in good standing for the month in proposition to the sum each Company's royalties bear to the whole.

The division of the ware into four schedules as follows:

Schedule 1 First Class Guaranteed Baths.
" 2 All other grades of Baths.
" 3 Small Ware—Lavatories, etc.
" 4 Roll Rim Sinks, One and Two Piece, Flat Rim Sinks.

Price preferentials to be arranged something like the following:

In order that there may be some legal arrangement for holding together the various manufacturers of Sanitary Enameled Ware and enable them to secure business on a continuous and profitable basis at price differentials that will insure each a fair proportion of the business, I wish to ask if your Company would be amenable to enter into a licensed patent arrangement with the writer along the lines of the attached proposed arrangement.

1 Such an arrangement would not interfere with the Association as it exists or the purpose for which it was organized. It does not mean a selling company or a pool, but simply legalized selling co-operation. It would be my idea to create a list of differentials for the various Companies from a standard price list and these differentials subject to change as conditions varied, so that each Company would be treated fairly in proportion to the whole.

I have taken this matter up with some of the Companies verbally and they are very much in favor of it. Will you kindly look over the attached papers and let me have your
2 ideas in the matter as early as possible? If the matter appeals to those with whom I have not talked as favorably as I think it will, I can arrange to put the arrangement into working order by Jan. 1st, 1910.

3

4

PETITIONER'S EXHIBIT No. 109.

Filed Nov. 3, 1910.

THIS AGREEMENT, Made in duplicate this day of by and between E. L. Wayman, a resident of the City of Pittsburgh of the State of Pennsylvania (hereinafter called the "Licensor") party of the first part, and a corporation organized and existing under the laws of the State of (hereinafter called the "Licensee") party of the second part,

WITNESSETH:

(1) THAT WHEREAS, the Licensor has this day granted to the Licensee a non-exclusive Class ( ) license to make and sell Sanitary Iron Enameled Ware under the following United States Letters Patents, to wit:

upon the terms and conditions in said License and License agreement set forth; and

(2) WHEREAS, the Licensor owns or has the right to grant Licenses under the following additional United States Letters Patent, to wit:

(3) AND, WHEREAS, the Licensee is desirous of securing a license of the character and upon the terms and conditions hereinafter set forth under such last enumerated Letters Patent, for the manufacture and sale of the Licensor's

(4) NOW, THEREFORE, for and in consideration of the covenants of this agreement, the parties hereto agree as follows:—

(5) The Licensor hereby grants to the Licensee, subject to the provisions hereinafter contained, a non-exclusive license to practice in the manufacture of Sanitary Iron Enameled Ware, the processes patented in said several Patents, to make and use in such manufacture the machines and devices patented in said

(6) Patents and to use and sell goods so made; the said license being non-assignable and non-transferable, except to successors to substantially the entire good-will and business of the Licensee. This License shall be available for the Licensee, its successors or assigns only so long as it or they are not engaged in the manufacture of similar lines.

1 CLAIMS (7) The Licensor hereby agrees to suspend his claims against the Licensee and its customers for damages or profits which they may be entitled to receive for any claim for any past infringement of said patent by said Licensee, as long as said Licensee continues to perform all of its obligations under this contract.

(8) So long as the Licensee operates under this license or any renewal thereof and keeps and performs all of the obligations of said Licensee herein contained, the Licensor agrees not
2 to bring action against said Licensee because of its use of any machines, method or processes now or heretofore used by said Licensee in the manufacture of enameled ware, and for which patents have already been issued to said Licensor, and to waive and all claims under any letters patent on any machines, devices, or processes now in use by said Licensee, and to grant to said Licensor full use and enjoyment thereof.

3 ROYALTIES (9) The Licensee shall pay the following royalties for License herein granted, to wit:

Class A License $1500. per month.
Class B License $1200. per month.
Class C License $ 800. per month, payable on or before the 5th day of each month as follows:
5% in cash, 95% in 90 days promissory notes without interest.

(10) This agreement is entered into as a Class ( ) License, with the following price differ-
4 entials:

	(Subject to exceptions in paragraph 11)	Selling Discount from Price List issued by the Licensor.
Schedule 1	First Grade Guaranteed Baths	*
" 2	All other Grades of Bath	*
" 3	Small Ware—Lavatories, etc.	*
" 4	R. R. Sinks—1 & 2 Piece	*
"	Flat Rim Sinks	*

CHANGE OF LICENSE CLASS

but may be changed to either Class ( )

or Class ( ) when notified in writing by the Licensor, upon two-thirds vote of all the Companies operating under a similar License or upon the recommendation of an Executive Committee appointed by the various Companies for this purpose. It shall be the particular and special charge of this Committee to consider any complaints which may be made by any member to the effect that the actual working of the classification under which any particular Company may be working is to the detriment of the others and to make recommendation which may tend to remedy such inequality, it being the intent that from time to time such measures as may be deemed equitable for the relief of any License, may be adopted as provided for. 1 2

(11) The following Companies shall be quoted ( ) per cent. discount from the prices established by the Licensor, on all schedules. EXCEPTIONS 3

The following Companies shall be quoted ( ) per cent. discount from the prices established by the Licensor, on all schedules. 4

(12) All terms, conditions, regulations and prices governed by this agreement now established by the Licensor and set forth in schedules attached to and made part hereof, subject to the differential selling discounts named in the preceding paragraph, shall be in force and effect

1 until other terms, conditions, regulations and prices are substituted, therefore by the Licensor
PRICES which substitution he is entitled to make from time to time, hereafter by notice in writing to the Licensee. The Licensee covenants to adhere to and maintain such terms, conditions, regulations and prices as may be established by the Licensor from time to time; the Licensor to be governed by competition in the regulation of prices and shall not name such prices that will prohibit the manufacture and sale of the prod-
2 ucts being manufactured under the patents enumerated.

(13) If at the end of the third month of the first year (said year beginning) ROYALTY it shall appear that the Licensee has during the REBATES first month complied with all the terms of this agreement, the Licensor shall credit the Licensee upon its next succeeding payment hereunder the following rebates from the royalties paid for said License for said first month's royalties, to wit 95% of the amount originally
3 paid by the Licensee.

(14) At the termination of each succeeding month of the said License, if it shall appear that the Licensee has fully complied with the terms of this agreement during the second preceding month, the Licensor shall make a similar rebate in respect of the royalties paid by the Licensee during the second preceding month.

(15) In case of failure on the part of the Licensee to comply fully with the terms of this
4 PENALTIES agreement during any month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited (as hereinafter provided for) as penalty for said violation and shall at once notify the Licensee to that effect.

Penalties shall be deducted from all unpaid rebates at the rate of $1000.00 for each violation, and 75 per cent. of all penalties retained by the Licensor will be divided among the Licensees in good standing during the month, in proportion to the amount each Company's royalty bears to the amount to be divided. 1

(16) The restrictions herein contained, as to the prices at which Enameled Ware is to be sold shall not apply to Enameled Ware sold and exported to foreign countries. No existing contracts for the sale of Enameled Ware extending beyond 1910, shall be recognized by the parties hereto. 2

EXPORT

(17) Nothing in this agreement shall be construed to prevent the Licensee or its customers from exercising all the rights and privileges in any such territory as are at present enjoyed by or shall be extended to any other License or its customers under a similar license.

(18) The License admits the validity of said several Patents enumerated herein, for the purpose of this agreement and license only, and it is further agreed that upon the termination of this agreement and license for any cause the Licensee shall not be estopped to deny the validity of the said Patents or any of them. The Licensor agrees that it will, upon the written request of at least three-quarters in number of the Licensees at any time holding licenses similar to this license, use all legal and equitable means to protect the License in the full use and enjoyment of the rights under this agreement and license from all non-licensed parties using any of said machines, processes, or devices, or from any sales infringing said patents by customers or any such parties, either by suits or by bringing them under a similar license. If, however, the Licensor refuses to take such action against such non-licensed parties, other customers or users of such non-li- 3 4

VALIDITY OF PATENTS

PROTECTION OF LICENSEE

censed goods, for ninety days after being requested so to do, as before provided, this license shall be voidable at the election of the License communicated in writing to the Licensor, and the Licensee thereafter shall be released from all obligations hereunder, and shall not hereafter be estopped to deny the validity of said Patents or any of them.

(19) No goods manufactured under this license shall be sold, unless they bear a registered label owned by the Licensee and in addition thereto a license tag or label approved by the Licensor, which license tag or label shall be placed in a visible position on all goods made hereunder and sold by the Licensee.

LABELS

(20) This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of five (5) years from the date hereof, unless previously terminated as herein provided, and if the Licensee faithfully performs the conditions hereof throughout the contract period, this agreement and license shall be renewed at the expiration of said period, at the option of the Licensee, for a further term of five years on conditions not less favorable than herein expressed.

(21) This agreement, however, may be cancelled, by the Licensor by written notice upon repeated breaches by the Licensee of any of the covenants herein contained; and shall terminate in any event upon the termination (for any cause whatever) of the License Agreement mentioned in first recital of the preamble hereof.

(22) IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year above written.

. . . . . .

. . . . . .

Class A Manufacturers	Net Prices	1
" B "	2½% discount	
" C "	5% "	

Schedule 1 First Grade Guaranteed Baths.
" 2 All other Grades of Baths.
" 3 Small Ware—Lavatories, etc.
" 4 Roll Rim Sinks 1 and 2 Piece-Flat Rim Sinks

Schedules	1	2	3	4	
	Price Class				
Blairsville Enameled Ware Co.	C	A	C	B	
Barnes Mfg. Co., The	C	A	A	A	2
Cahill Iron Works, The	A	A	A	A	
Colwell Lead Co.,	C	A	B	B	
Clymer Mfg. Co.	C	B	C	B	
Day-Ward Co., The	C	A	B	B	
Humphryes Mfg. Co.,	C	A	B	B	
Iron City Mfg. Co.,	C	A	B	B	
Kohler Sons Co., J. M.	A	A	A	A	
Mott Iron Works, J. L.	A	A	A	A	
McVay & Walker	C	B	C	C	
McCrum-Howell Co.,	C	A	B	B	
National Sanitary Mfg. Co.,	C	A	B	B	3
Standard Sanitary Mfg. Co.	A	A	A	A	
Union Sanitary Mfg. Co.	C	A	B	B	
United States Sanitary Mfg. Co.	A	A	A	A	
Wolff Mfg. Co., L.	A	A	A	A	
Weiskittel & Son, A.	C	A	B	B	
Wheeling Enameled Iron Co.,	C	A	B	B	

4

1 Class A Manufacturers $1500.00 Monthly Royalty
" B " 1200.00 " "
" C " 800.00 " "

	Class—	*Monthly Royalty* A	B	C
	Blairsville Enameled Ware Co.			$800.
	Barnes Mfg. Co., The			$800.
	Cahill Iron Works, The	$1500.		
	Colwell Lead Co.,			800.
	Clymer Mfg. Co.			800.
2	Day-Ward Co., The		$1200.	
	Humphryes Mfg. Co.		1200.	
	Iron City Mfg. Co.	1500.		
	Kohler Sons Co., J. M.	1500.		
	Mott Iron Works, J. L.	1500.		
	McVay & Walker,			800.
	McCrum-Howell Co.		1200.	
	National Sanitary Mfg. Co.		1200.	
	Union Sanitary Mfg. Co.		1200.	
	United States Sanitary Mfg. Co.	1500.		
	Wolff Mfg. Co., L.	1500.		
3	Weiskittel & Son, A		1200.	
	Wheeling Enameled Iron Co.			800.
		$9000.	$7200.	$4800.

95% Rebate leaves 5% yearly—$12.600.00

4

PETITIONER'S EXHIBIT No. 110.

Filed Nov. 3, 1910.

J. L. Sullwold, Prest. & Secy.

THE WESTERN CO.
Sibley and Fifth Streets
Incorporated 1889

Jobbers of
Plumbers, Steam & Gas
Fitters Supplies.
Pumps,
Iron Pipe and Fittings,
Sanitary Specialities,
Radiators, Hose Goods.

Manufacturers of
The Saint Paul House
Heating Boiler
Soil Pipe & Fittings.

Saint Paul, Minn. June 7, 1910.

Mr. Edwin L. Wayman,
Pittsburgh, Pa.

Dear Sir:

As we purchase our small enameled ware principally from J. M. Kohler Sons Co., Sheboygan, Wis., we ask you for a written permission to continue to sell this commodity, so that we may continue to deal with this concern, whose goods we have illustrated in our catalogues and enjoy the full rebates of the licensed jobbers agreement.

Yours very truly,
WESTERN SUPPLY CO.
Per J. L. SULLWOLD.

dict. J.L.S.

PETITIONER'S EXHIBIT No. 111.

Filed Nov. 3, 1910.

W-791022-I
July 9th, 1910.

Mr. J. L. Sullwold,
c/o The Western Supply Co.,
St. Paul, Minn.

Dear Sir:—

Referring to our conversation in Chicago with reference to Jobbers' License Agreement. I had hoped to take the
2 matter up further with you the next day but was unable to locate you.

In accordance with our conversation, I wish to supplement my letter of June 10th with the following:

> "If you will execute the Jobbers' License Agreement, it will be satisfactory for you to continue purchasing Ware made by the J. M. Kohler Sons Co., Sheboygan, Wis. until further notice, with the understanding that you will stock some Licensed Ware and push the sale of it and that you will furnish me with the amounts of your total purchases from the
> 3 Kohler Co. monthly. These amounts need not be itemized".

I hope that Mr. Kohler will in the future see fit to manufacture Ware under Patents that I own for the reason that I believe he can make better goods than he is making at the present time and more economically. I had hoped to go further into the matter with you on the next day, but will try and see you again in Chicago when you find it convenient to be there if you will let me know.

I am very pleased to make your acquaintance and trust
4 we will become better acquainted in the future.

With kind regards and trusting that you reached home safely, I am,

Yours very truly,

PETITIONER'S EXHIBIT No. 112.

Filed Nov. 3, 1910.

J. L. Sullwold, Prest. & Secy.

THE WESTERN SUPPLY CO.

Sibley and Fifth Streets

Incorporated 1889

Jobbers of
Plumbers, Steam & Gas
Fitters Supplies.
Pumps,
Iron Pipe and Fittings,
Sanitary Specialities,
Radiators, Hose Goods.

Manufacturers of
The Saint Paul House
Heating Boiler
Soil Pipe & Fittings.

St. Paul, Minn. July 11, 1910.

Form 2

Mr. E. L. Wayman,
Pittsburg, Pa.

Dear Sir:—

"Yours of the 9th. at hand and noted. I beg to state that the proposition outlined in your letters is an insult to any one of ordinary intelligence and our Company will now take the stand that we will use all honorable means to break up this illegal combination."

We shall continue to use Kohler goods.

Yours respectfully,

Dict. J.L.S. (Signed) J. L. SULLWOLD.

1 PETITIONER'S EXHIBIT No. 113.

Filed Nov. 3, 1910.

W-7141005-C

July 14, 1910.

Mr. J. L. Sullwold,
c/o Western Supply Co.
St. Paul, Minn.

Dear Sir:—

2 This is to acknowledge receipt of your letter of the 11th inst., for which please accept my thanks.

Yours very truly,

PETITIONER'S EXHIBIT No. 114.

3 Filed Nov. 3, 1910.

ATLAS SUPPLY COMPANY.
Muskogee, Oklahoma.

June 30th, 1910.

Mr. E. L. Wayman,
Pittsburgh, Pa.

Dear Sir:—

4 "Acknowledging your telegram of June 27th relative to the agreement covering Sanitary Licensed Enamel Ware. I have gone over this matter carefully with our people and have been advised under present conditions not to sign any contracts or agreements. Our prices conform with those of licensed manufacturers and should we decide to make any changes in them we will be glad to furnish you with our new selling prices".

Yours respectfully,
ATLAS SUPPLY COMPANY.
Per H. BOWSER,
Secretary & Treasurer.

PETITIONER'S EXHIBIT No. 115.

Filed Nov. 3, 1910.

ATLAS SUPPLY COMPANY
Muskogee, Oklahoma.

July 12th, 1910.

Mr. Edwin L. Wayman,
Arrot Bldg.,
Pittsburgh, Pa.

Dear Sir:—

Acknowledging your favor of July 10th will say that I replied to your telegram of June 17th and fully explained our position in regard to the jobbers license agreement. This letter was not directed properly and was returned to us last Saturday, at which time we forwarded it to the proper address. Suppose you have received it by this time.

Yours respectfully,
ATLAS SUPPLY COMPANY
Per, H. BOWSER,
Secretary & Treasurer.

HPB/TW

PETITIONER'S EXHIBIT No. 116.

Filed Nov. 3, 1910.

POSTAL TELEGRAPH—COMMERCIAL CABLES.

Telegram

R125 g.w. 16
Muskagee Okla July 11' 10.
Edwin S. Lawman,
Arrott Bldg., Pgh—

Kansas City jobbers are quoting Kansas City resale price on enamel ware in Oklahama Irrespective to resale prices.

ATLAS SUPPLY CO 251p.

1 PETITIONER'S EXHIBIT No. 117.

Filed Nov. 3, 1910.

Pittsburgh, July 11, 1910.

Atlas Supply Co.,
Muskogee, Okla.

Please send me definite information, if possible, regarding Kansas City Jobbers prices in your territory. It would simplify situation if you would sign License Agreement regarding which I wrote you yesterday.

(Signed) E. L. WAYMAN.

2 Charge to E. L. Wayman, 1301 Arrott Bldg.

PETITIONER'S EXHIBIT No. 118.

3 Filed Nov. 3, 1910.

POSTAL TELEGRAPH COMMERCIAL CABLES

Night Lettergram

829 Ny. Ln. 24 N. L.
Muskogee, Okla., June 17th., 10.
E. L. Wayman,
Arrott Bldg., Pittsburg, Pa.

In event we execute license agreement will we be permitted to purchase ware from Kohler. Your wire received. Have Kansas City jobbers adopted the agreement.

4 ATLAS SUPPLY CO.—11:27 PM.

PETITIONER'S EXHIBIT No. 119.

Filed Nov. 3, 1910.

W-7101043-C

July 10, 1910.

Atlas Supply Co.,
Muskogee, Okla.

Gentlemen:—

I have not received reply to my telegram of June 17th. and letter of the 22nd., and would thank you to advise me if you can see your way clear to execute the Jobbers License Agreement on the terms contained therein; and also if you are maintaining the present re-sale prices.

Thanking you in advance for a reply, I am,

Yours very truly,

PETITIONER'S EXHIBIT No. 120.

Filed Nov. 3, 1910.

W-7151022-C

July 15, 1910.

Atlas Mfg. Co.,
Muskogee, Okla.

Gentlemen:—

Answering your letter of the 30th. ultimo, I am trying to arrange a meeting of some of the jobbers in your territory who have not signed the License Agreement. Your territory is about the only exception in the whole country where any trouble seems to exist, and it would seem that a joint conference between the parties interested should have the desired result.

Would you be willing to attend such a meeting if held in Chicago?

Yours very truly,

1 Filed Nov. 3, 1910.

PETITIONER'S EXHIBIT No. 121.

ATLAS SUPPLY COMPANY
Muskogee, Oklahoma,

June 18, 1910.

Mr. Edwin L. Wayman,
Arrott Bldg.,
Pittsburg, Pa.

Dear Sir:—

2 Acknowledging your favor of June 16th., will say that since we opened up here a year ago this spring we have handled quite a bit of Kohler's Enamel Ware. Before we ordered our opening stock we corresponded with a number of the leading Enamel Ware manufacturers and tried to purchase material from them. A great many of them had their ware tied up with other jobbers, who had the exclusive sale of this territory and were therefore unable to supply us.

3 The Kohler people offered us a very nice proposition and we decided to handle their ware. They have used us very nicely and their goods have given excellent satisfaction, and we have worked up a very nice business, and were we to change our ware at the present time, it would mean quite a loss of business to us.

I have recent advise from the Kohler people, saying that they were willing to maintain the same price as licensed manufacturers. If they do this and we maintain re-sale prices I see no reason why we should not be allowed to purchase material from them.

4 When we wrote for prices to the different concerns for our opening stock we received quotations from several and at the price that they quoted us it would have been impossible for us to compete with other jobbers, as Crane Company and Kansas City jobbers were selling bath tubs, etc. at very near the price which some of the manufacturers wanted for the same material from us. The Kohler people have taken excellent care of us and have put us in position whereby we are on equal footing with other jobbers. For these and other reasons we do not feel like making a change at the present time.

We trust that you will see it in this light and that we may receive your permission to continue the present relation already established. 1

Yours respectfully,
ATLAS SUPPLY COMPANY,
Per H. P. BOWSER,
Treasurer.

H.P.B./T.W.

2

3

4

work. This tub, equipped in various ways, with either Bell Supply or Top Nozzle Fixture and with special porcelain pieces and with very heavy brass work, takes a price much higher than your schedule price to the plumber, and if we should bill this separate and apart we would be revealing to the plumber a vital point in our business which is necessary, in its maintenance, and would occasion a great deal of controversy and adjustment by him. We are perfectly willing to maintain a separate file, showing exactly the net price that this tub was sold at, for your inspection, but we do believe that the privacy of our business should not be invaded to that extent by the plumber. This same condition would apply, we believe, to Meyer-Sniffon, Federal Huber Co., of New York and The Peck Bros. & Co. of this city, and it presents a problem of difficulties, along with dangers, to our very existence. This same example which we give of the bath tub, is true of lavatories, and we would like your views as to this condition, which is vital with us. Bear in mind please, that there is absolutely no danger of our cutting prices as the expense of the conduct of our business is greater than the ordinary jobbers, from the fact that we maintain an architectural force as well as a draughtsman, and a showroom, so that we could not afford to sell goods on a basis of only 10% profit, as we understand some of the jobbers do. We are not after an immense volume of business but are after a particularly fine trade such as residences, the owners of which are willing to pay a higher price for specially high grade goods.

In the second place, J. M. Kohler Sons Co. have established a showroom in our city, which is very attractive, and they also have friends amongst the architects, who specify their material. If our friends amongst the plumbers ask us for price on a certain architect's specification, which calls for Kohler's goods, according to Paragraph 10, under the subject of Rebates, this is prohibited except by permission from you for each specific case. This is going to lead, we fear, to an endless amount of correspondence. Many times a price is asked immediately, and we would scarcely have time to get word to you, and get your permission, before the order would be placed.

Third, in many cases where contracts were placed with us for plumbing fixtures, delivery not being required until late June, July or even first of August, we had placed

the orders for these tubs with either The Standard Sanitary Mfg. Co. or The U. S. Sanitary Mfg. Co. for shipment at stated times. These orders were placed prior to our having had any knowledge of a Licensed Agreement, and the orders were acknowledged in the regular way. What is the status of these orders, with those two manufacturers, at the present time? If they ship them at the times which we designated they would, of course, be subject to the conditions prevailing at the time the order was placed, in our opinion, as our sales were made in accordance with the conditions at that time. We would also like an expression from you on this subject. 1

You will pardon the length of this letter but we wanted to place our situation clearly to you, in these details, and ask for your opinion as best how to handle them. Bear in mind that, at no time, would we ever be in danger of cutting prices or disturbing contracts. On the other hand, we would be one of your best selling agents to boost up the prices. 2

We would appreciate a very frank reply.

Very truly,

THE HOTCHKISS, VAIL & GARRISON CO.

EWH

3

4

1 PETITIONER'S EXHIBIT No. 124.

Filed Nov. 3, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

Received
June 20 1910

THE HOTCHKISS, VAIL &
GARRISON CO.

2 W-6171008-R

June 17, 1910.

The Hotchkiss, Vail & Garrison Co.,
New York.

Gentlemen:—

Answering your esteemed favor of the 14th. would state that it is impossible for me to establish selling prices on goods not covered by the patents which I own. I have established selling prices on enameled iron ware, and al-
3 though it may work some hardships on the jobber in separating the billing of the fixture from the ware, I cannot under the circumstances do any thing different.

There is no objection to your getting better prices if possible than those established in sheets, but the conditions in general that have been established will not in my estimation effect you as much as indicated in your letter. The margin of profit established on enameled ware is from all reports received, greater than the jobbers have been in the habit of getting in the past few years. While I would like to accommodate you it is impossible to grant one jobber
4 concessions that cannot be granted others, and I believe if you will follow the prices, and conditions outlined that your results on your total business will be better in the next year than they have in the past.

As far as the Manufacturers who do not execute a license are concerned, would state that licensed manufacturers will give their jobbers every protection. I hope to be able to induce the Companies not licensed thus far to manufacture goods under the Patent of Processes, and I believe that I will succeed in the very near future. I hope

to meet some of the New York jobbers sometime next week, and hope I will be able to explain several points that on the face of them are not quite plain. 1

With reference to the orders you may have un-filled on your books, would state that it is the desire of the Licensed Manufacturers to support their jobbers in every way possible, and if you will furnish me a copy of these orders I will arrange the matter to your satisfaction.

I regret that I was not able to answer your letter sooner but in excess of mail at this particular time has prevented me giving the attention to each individual communication that it deserved.

Thank you for writing me, and trusting I may have the pleasure of seeing you in the near future, I am, 2

Yours very truly,

(Signed) E. L. WAYMAN.

3

4

1 PETITIONER'S EXHIBIT No. 125.

Filed Nov. 3, 1910.

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

W-5111002-1

May 11th. 1910.

This is to remind you that if you are not equipped with Automatic Apparatus for enameling that are covered by
2 the Patents in your License Agreement that you should take steps to install this equipment by June 1st. Will you kindly let me hear from you by return mail as to what you are now using and which patent you will operate under?

Yours very truly,

PETITIONER'S EXHIBIT No. 126.

Filed Nov. 3, 1910.

3 COPY

Do not write regarding more than one subject on this sheet.

UNION SANITARY MFG. CO.
Noblesville, Ind.

May 13th, 1910.

SUBJECT

To E. L. Wayman,
1509 Arrott Bldg.,
Pittsburgh, Pa.

4 Dear sir:

Your favor of the 11th, with reference to the Automatic Apparatus for enameling covering the patents in our license, will state that we are equipped at the present time for this arrangement.

Yours truly,
UNION SANITARY MFG. CO.
E. V. BRIGHAME,
Sec'y-Treas.

EVB

PETITIONER'S EXHIBIT No. 127.

Filed Nov. 3, 1910.

COPY

W-5161006-I

May 16th, 1910.

Mr. E. V. Brigham,
c/o Union Sanitary Mfg. Co.
Noblesville, Ind.

Dear sir:—

Replying to your letter of the 13th with reference to Automatic Apparatus for enameling, you state that you are equipped at present for this Arrangement, but do not state whether you are using Electric Power or Air. Kindly send me this information by return mail so that I can instruct the printer regarding the proper Labels to send you.

Yours very truly,

PETITIONER'S EXHIBIT No. 128.

Filed Nov. 3, 1910.

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

August 13, 1910.

To the Jobbing Trade:

My attention has been called to the fact that certain jobbers have allowed Plumbers to return to them the crates taken off of Enameled Ware, and have made them credit for these crates.

This is a violation of your Contract, and would be considered as cutting the price, and must not be done. Where a fixture is returned as defective, or for some other reason, you would, of course, allow the credit for the crate, the same as for the fixture. Where the crate is returned without the fixture, there must be positively no allowance made for same.

Yours very truly,

E. L. WAYMAN
Licensor.

1 **PETITIONER'S EXHIBIT No. 129.**

Filed Nov. 3, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-721010-C

July 2, 1910

Albert Weil, Sec'y & Treas.
Louis Lipp Company,
2 Cincinnati, Ohio.

Dear sir:—

Attached find copy of letter that I have written the Cincinnati Jobbers, which I trust will meet with your approval.

If it is possible for you and Mr. Lipp to come to Pittsburgh sometime next week I trust you will do so, and I have no doubt but what we could get together.

With kind regards and thanking you for the courtesies extended while in your city, I am

Yours very truly,
3 (Signed) E. L. WAYMAN.

4

PETITIONER'S EXHIBIT No. 130.

Filed Nov. 3, 1910.

EDWIN L. WAYMAN
Arrott Building,
Pittsburgh

W-721009-C
July 2, 1910

Gentlemen:—

Although the Louis Lipp Co. has not signed the License Agreement, and are not operating under the Patent Processes, I understand that, until further notice they will quote on their goods the same prices that have been established on Licensed Ware. In the past it has been their custom in your city to ship Tub uncrated. They have agreed to discontinue this practice and will in the future, furnish Tubs crated, and will charge for crating.

Yours very truly,

PETITIONER'S EXHIBIT No. 131.

Filed Nov. 3, 1910.

EDWIN L. WAYMAN
Arrott Building,
Pittsburgh

W-6211005-1
June 21st, 1910

Mr. Albert Weil,
c/o The Louis Lipp Co.,
Cincinnati, O.

Dear sir:—

In reply to your letter of the 20th, I will try and arrange to call on you in Cincinnati some time next week.

I understand that Mr. Ahrens and Mr. Lipp are old friends and am writing Mr. Ahrens suggesting that he make arrangements to be in Cincinnati at the time when the proposition can be gone over by all of us.

Yours very truly,

(Signed) E. L. WAYMAN.

GOVERNMENT'S EXHIBIT 132—PART 1.

PETITIONER'S EXHIBIT No. 132—(Part 1).

Filed Nov. 3, 1910.

COMPARISON OF FURNACE REPORTS

NOTE: FIGURED ON BASIS OF 25 WORKING DAYS PER MONTH JUNE—10

Manufactures	Number Furnaces Owned	Total Capacity Furnace Days	Operated During Month Furnace Days	Per Cent of Capacity Operated	Per Cent of Capacity and Operation to Total Capacity and Operation all Licensees Capacity Operated		Per Cent of Capacity Operated in Proportion to Average Capacity Operated by all Licensees		Gross Royalty	Net Royalty
							Over	Under		
Barnes	3	75	52	69	1 50	1			260 00	52 00
Cahill	8	2 00	120	60	4	2 55		9	600 00	120 00
Colwell	3	75	52	69	1 50	1			260 00	52 00
Day Ward	6	1 50	52	34 50	3	1		34 50	260 00	52 00
Humphreys	5	1 25	48	46 50	2 50	1		22 50	240 00	48 00
Kerner	2	50	42	84	1	1	15		210 00	42 00
Mott	5	1 25	98	78 5	2 50	2	9 50		490 00	98 00
McVay Walker	4	1 00	52	52	2	1		17	260 00	52 00
McCrum Howell	8	2 00	118	59	4	2 50		10	590 00	118 00
National	5	1 25	104	84	2 50	2	15		520 00	104 00
Standard	89	22 25	1517	68	45 75	31 50		1	7585 00	1517 00
United States	8	2 00	197	98 50	4 25	4 50	29 50		985 00	197 00
Union	4	1 00	78	78	2	1 75	9		390 00	78 00
Wolf	35	8 75	739	84 50	18 50	14 50	15 50		3695 00	739 00
Weiskittle	7	1 75	75	43	3 50	1 50		26	375 00	75 00
Wheeling	3	75	11	14	1 50	0 20		55	55 00	11 00
Totals	195	48 75	3335		100	69			16775 00	3355 00

GOVERNMENT'S EXHIBIT 132—PART 3.

PETITIONER'S EXHIBIT No. 132—(Part III).

Filed Nov. 3, 1910.

COMPARISON OF FURNACE REPORTS

NOTE: FIGURED ON BASIS OF 25 WORKING DAYS PER MONTH AUGUST—1910

Manufactures	Number Furnaces Owned	Total Capacity Furnace Days	Operated During Month Furnace Days	Per Cent of Capacity Operated	Per Cent of Capacity and Operation to Total Capacity and Operation all Licensees Capacity Operated		Per Cent of Capacity Operated in Proportion to Average Capacity Operated by all Licensees		Gross Royalty	Net Royalty
							Over	Under		
Barnes	3	75	36	48	1 54	0 74		25 38	180 00	36 00
Cahill	8	2 00	108	54	4 10	2 21		19 38	540 00	108 00
Day Ward	6	1 50	26	17 3	3 08	0 53		56 08	130 00	26 00
Humphreys	5	1 25	50	40	2 57	1 02		33 38	250 00	50 00
Kerner	2	50	54	100	1 02	1 10	26 62		270 00	54 00
Mott	5	1 25	130	100	2 57	2 66	26 62		650 00	130 00
McVay Walker	4	1 00	...	...	2 05	..	.. ..		... ..	... ..
McCrum Howell	8	2 00	78	39	4 10	1 61		34 38	390 00	78 00
National	5	1 25	85	68	2 57	1 74		5 38	425 00	85 00
Standard	89	22 25	1846	83	45 64	37 89	9 62		9230 00	1846 00
United States	8	2 00	176	88	4 10	3 61	14 62		880 00	176 00
Union	4	1 00	81	81	2 05	1 66	7 62		405 00	81 00
Weiskittle	7	1 75	78	44 5	3 59	1 61		28 88	390 00	78 00
Wheeling	3	75	8	10 6	1 54	0 16		62 78	40 00	8 00
Wolf	35	8 75	761	87	17 94	15 61	13 62		3805 00	761 00
Colwell	3	75	60	80	1 54	1 23	6 62		300 00	60 00
Totals	195	48 75	3577		100%	73 38			17885 00	3577 00

PETITIONER'S EXHIBIT No. 134.

Filed Nov. 3. 1910.

No. 633,941 Patented Sept. 26. 1899.

J. W. ARROTT, Jr.

DREDGER FOR PULVERULENT MATERIAL.

(Application filed Mar. 21. 1898.

(No Model.)

Fig 1

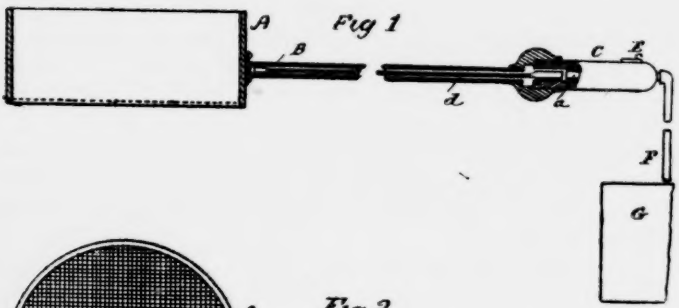
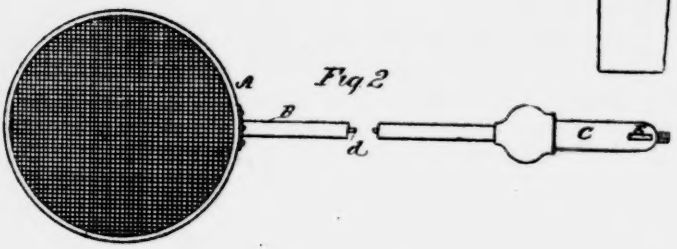


Fig 2



WITNESSES

James W. Arrott Jr.

INVENTOR

By Connolly Bros

Attorneys

1 UNITED STATES PATENT OFFICE.

James W. Arrott, Jr., of Allegheny, Pennsylvania—

Dredger for Pulverulent Material.

Specification forming part of Letters Patent No. 633,941, dated September 26, 1899—Application filed March 21, 1899—Serial No. 709,945. (No model.)

To all whom it may concern:

Be it known that I, JAMES W. ARROTT, Jr., a citizen of the United States, residing at Allegheny, in the county of
2 Allegheny and State of Pennsylvania, have invented certain new and useful Improvements in Dredgers for Pulverulent Material; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

This invention has relation to articles used for sifting and distributing powdered enameling material on the surface of bath-tubs and other vessels, commonly known to the trade as "dredgers."

3 The ordinary dredger consists simply of a sieve or other screen of proper mesh having a handle of convenient length by which it is held and manipulated. As the pulverulent material does not freely pass through the sieve or evenly distribute itself spontaneously, it is necessary in dredging to continually agitate the dredger with the hand or with some instrument held in the hand by tapping or striking the dredger or by striking the dredger against the edge of the article to be enameled. This renders the labor of dredging or sifting very tiresome and slow and requires considerable skill in manipulating the dredger so as to insure an even delivery of the enameling material.

4 The object of this invention is to provide an automatic tapper or agitator which will deliver a succession of rapid blows against the side or end of the dredger and while relieving the workman of a great deal of labor causes the pulverulent material or powder to be evenly distributed and to be uniformly discharged. The device which I employ for this purpose is preferably a pneumatic hammer, the piston or plunger of which is elongated and fitted to the hollow handle of the dredger, so as to reciprocate

within the latter and strike the end or side of the dredger with every forward stroke. 1

In the accompanying drawings, Figure 1 is a longitudinal sectional view of a dredger constructed according to my invention, and Fig. 2 is a top view of the same.

A designates the sieve or sifter, consisting of a box-like receptacle or trough having a wire-cloth screen at the bottom, through which the enameling material is shaken.

B designates a tubular handle consisting of a section of pipe attached to the end of the sifter.

C designates the body or casing of the pneumatic hammer, coupled to the end of the handle and of any suitable construction. 2

The piston *a* is either extended through the handle or is connected to a rod *d*, which operates in unison with the piston and which may be formed with enlargements at the ends to fit the bore of the handle and the end of the casing. The end of the handle next to the dredger is plugged to receive the stroke of the rod or piston. The air-tube F, leading from a compressed-air reservoir G, which is preferably flexible, is coupled to the outer end of the casing, and a suitable valve E is provided within easy reach of the workman to control the admission of air and regulate the force of the blow. 3

By the use of this device the operator is enabled to distribute and deposit the enamel more quickly and evenly and has the use of both hands to carry and manipulate the dredger, relieving him of a great deal of hard work and enabling him to turn out more work in a given time than is possible by the use of the present style of dredger.

I am aware that jarring or vibrating devices have been used in stationary apparatus used for sifting materials, and I disclaim any application of my invention to such purposes; but in the operation of the application of enamel in the powdered form the dredger or sifter has always been carried by the operator in one hand, while the necessary jar to produce sifting was communicated either to the handle of the sifter or to the sifter itself by some instrument in the other hand, or in some instances the sifter is held in both hands by one operator, while an assistant produced the necessary jar to cause sifting, and it is to this class of apparatus and operations that my invention relates and applies. 4

The pneumatic hammer forming part of the agitators is of the ordinary and well-known construction in which the piston has a rapid reciprocating motion automatically produced by the action of compressed air.

Having thus described my invention, what I claim as new is—

1. A dredger or sifter consisting of a screen or sieve and a supporting-handle, in combination with a pneumatic agitator attached to the dredger and adapted to vibrate the sieve substantially as described.

2. A dredger or sifter consisting of a sieve and a handle in combination with an automatic agitator secured to and carried by the dredger and adapted to agitate or vibrate the same, substantially as described.

3. A dredger or sifter comprising a sieve and handle and an automatic agitator secured thereto with means for controlling the operation of said agitator, substantially as described.

In testimony whereof I affix my signature in presence of two witnesses.

JAMES W. ARROTT, Jr.

Witnesses:
GEO. W. CRAIG,
E. F. GREGG.

PETITIONER'S EXHIBIT No. 135. 1

Filed Nov. 3. 1910.

E. DITHRIDGE.
PNEUMATIC SIEVE.
APPLICATION FILED APR. 1. 1908

949,625. **Patented Feb. 15, 1910.**

2

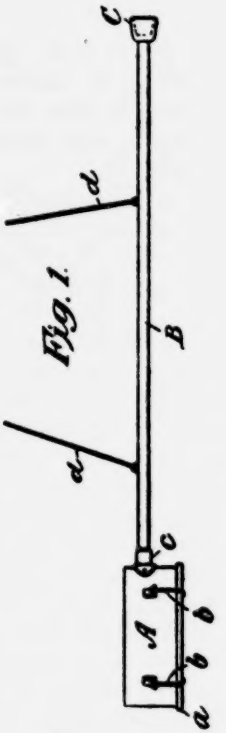


Fig. 1.

Fig. 2.

3

4

Attest:
W. Smith Jr.
A. A. Hoehle

Edward Dithridge Inventor:
by W. P. Preble Jr.
his Atty.

1 UNITED STATES PATENT OFFICE.

EDWARD DITHRIDGE, OF MORRISVILLE, PENNSYLVANIA, ASSIGNOR TO THE J. L. MOTT IRON WORKS, A CORPORATION OF NEW YORK.

PNEUMATIC SIEVE.

Specification of Letters Patent.

949,625. Patented Feb. 15, 1910.

2 Application filed April 1, 1908. Serial No. 424,496.

To all whom it may concern:

Be it known that I, EDWARD DITHRIDGE, a citizen of the United States of America, and a resident of Morrisville, in the county of Bucks and State of Pennsylvania, have invented certain new and useful Improvements in Pneumatic Sieves, of which the following is a specification.

The object of my invention is to provide a pneumatic sieve of exceedingly simple construction; which can be 3 very readily and easily handled; and the action of which, in delivering its contents, can be very readily and easily controlled.

My invention relates more particularly to that class of sieves which is commonly known as a dredger, that is to say, a sieve which is designed to receive material of uniform size and to sift, sprinkle or discharge the same upon some object which it is designed to coat or cover. Such sieves have long been used in the enameling of bath tubs and other castings in which case the material to be sifted consists of dry powdered enamel. This enamel is sprinkled 4 dry over the surface of a red-hot tub or other casting, and fuses with the heat of the article to which it is applied. My invention, however, is applicable with advantage to other styles of sieves, namely, those in which materials of different seizes are to be assorted by jarring the contents of the sieve so that the smaller particles fall through, and is also applicable to foundry sieves in which sand for molding purposes has to be repeatedly sifted between the breaking up of old molds and the forming of new ones. It is also applicable with advantage to flour bolts, and, in

fact, to all sifting apparatus where the desired effect can 1
be produced by a constant slight trembling or shaking of the sieve and its contents. In devices heretofore used for this purpose, where the body of the sieve was not itself moved back and forth so as to disturb the contents and keep them in motion, the necessary jar for keeping the meshes of the sieve from clogging and to cause the material to flow as desired through the sieve has been caused by some form of automatic or pneumatic tapper or hammer which operated mechanically or pneumatically to strike the side of the sieve with such force and such frequency as experience showed the particular purpose in view re- 2
quired. When such automatic or pneumatic means were not employed the blows were given by a hand hammer or beater which had the advantage over the automatic or pneumatic tapping that it could be instantly stopped whenever occasion arose. When such automatic or pneumatic tappers were employed they were attached or secured to, and consequently carried by, the sieve or the sieve handle or the frame-work supporting the sieve, and sometimes this was the case also with the hand tapper.

Among the disadvantages inherent in having the hammer or agitator or beater or tapper or whatever it may be 3
called secured to or carried by the sieve or dredger or anything rigidly connected with it, I have found the following: It is difficult and sometimes impossible to stop the blows suddenly. It is difficult to vary and control the force of the blows. When either the tapper or the sieve gets out of order the apparatus is out of commission until repairs are made. The motive power has to be stopped in order to stop the flow of material from the sieve. There are other disadvantages. To overcome these disadvantages, and to combine the advantages of an automatic or pneumatic tapper with those of the old hand tapper, I provide an 4
apparatus in which the tapping device is not carried or in any way attached to or secured to the sieve, but is entirely separate from it as was the case with the old hand tapper. Yet the sieve is so constructed that it can be operated by the aid of a pneumatic hammer or any other power-driven automatically-operating device so as to take advantage of the rapidity of succession in the taps administered.

In carrying out this invention, therefore, I provide a

1 sieve or sifting apparatus which is complete in itself and which is adapted to receive the necessary taps from any suitable tapping device, power-driven or hand-operated. And I provide a power-driven tapper, preferably a pneumatic hammer, of a size and weight adapted to be conveniently held in the hand of the workman, and to be brought into contact with said sieve whenever a tapping action is desired.

When my improved pneumatic sieve is used for enameling bath tubs it is preferable to have the handle of the sieve supported by chains or otherwise from the ceiling of the
2 foundry or other fixed support in sufficient proximity to the cradle on which the tubs are deposited on removal from the furnace so that the enameler does not have to support the weight of the sieve at all, but simply guides it over the turning tub as occasion requires by controlling its movements through grasping the end of the long handle. When the sieve is used on small ware so that less enamel is required for the coat and the operative is not exposed to such an extense radiation of heat, the sieve may be small enough and light enough to carry in the hand and not require this outside or over-head support.

3 In the accompanying drawings I have shown a simple form of my improved device.

Figure 1 is a side elevation of the sieve. Fig. 2 is a side elevation of an ordinary pneumatic hammer such as used for many purposes, including the chipping of bath tubs when provided with a suitable chisel or chipping tool, and showing a part of the air supply pipe.

I use this without any chisel or substitute therefor because the tapping which I employ does not consist of positive blows delivered against the side of the sieve as has heretofore been the case, but is more in the nature of a
4 vibration or a succession of shaking or trembling undulations passing molecularly through the substance of the handle and sieve, from which they are delivered to the material in the sieve. The molecular agitation of this material thereby becomes sufficient to cause it to flow steadily through the meshes of the sieve. This flow lasts while the agitation lasts, stops when the agitation stops, and varies with the amount of agitation which is easily controlled.

A is a sieve of suitable construction which, as usually employed for enameling bath tubs, is a drum-shaped body

of circular form made of metal with a mesh of fine wire stretched over the bottom and drawn tight by means of the band *a*, and screw-threaded rods *b*, *b*, in the usual way. B is a handle, preferably solid and of wood, although a hollow metal handle or a metal handle filled with wood might be substituted, if preferred. This handle is attached to the sieve by a suitable socket *c*, and is preferably suspended from the ceiling or other fixed support by chains, cords, or wires *d*, *d*. There is nothing new about this part of the construction, the handle being old and the sieve being old, as well as the means for tightening the sieve mesh and for attaching the handle to the sieve. 1

The novelty of my improved sieve consists in providing a cup C, which is attached to any convenient part of the sieve handle, preferably at the extreme end, as shown. By the addition of this cup the sieve becomes adapted for operation by any suitable hammer or beater whether electric, pneumatic, hydraulic, or driven by steam or any mechanical power. 2

D represents a pneumatic hammer or tool of usual construction and may be any of the usual and well-known types, which have been put upon the market, in which an internal agitation is produced by the rapid driving back and forth in the interior of the hammer of a piston or other moving part by the admission and exhaust of air or any suitable gas. Sometimes these hammers have a valve and sometimes they are valveless. As heretofore used such hammers have been provided with some kind of a tool such as a chisel, a gouge, a bit, a hammer-head, or some other device the shank of which enters the nozzle of the hammer and receives the blows of the reciprocating piston. In my use of these hammers I dispense with any such auxiliary tool as I do not utilize or desire to use any direct pounding action but simply the molecular vibration caused by the rapid reciprocation of the piston back and forth inside the hammer, which vibration is communicated to the wooden handle from the air inside of the hammer, which air enters through the flexible tube *e*. 3 4

The cup or funnel C, serves chiefly as a guide or rest for the nozzle of the hammer or other beating device, and the interior, therefore, may be tapered as shown in dotted lines so as to present a recess of such size and shape as to permit the nozzle to enter and to be withdrawn easily. It

PETITIONER'S EXHIBIT No. 136.

Filed Nov. 3. 1910.

W. LINDSAY.

ENAMELING POWDER DISTRIBUTER.

APPLICATION FILED JULY 6, 1909.

939,918. Patented Nov. 9, 1909.

Fig 1

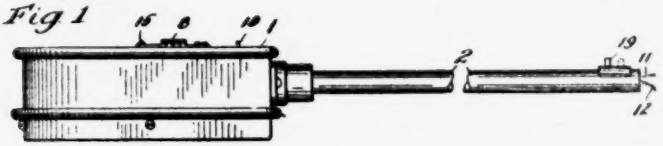


Fig. 2

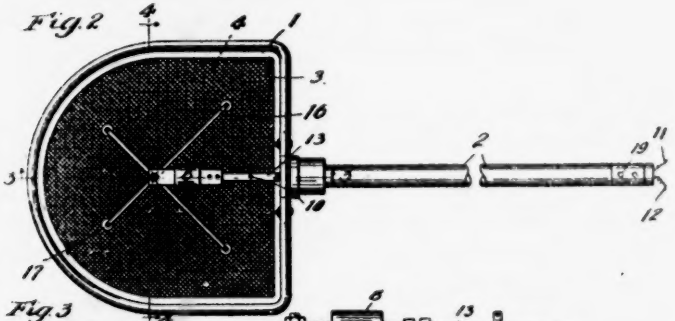


Fig 3

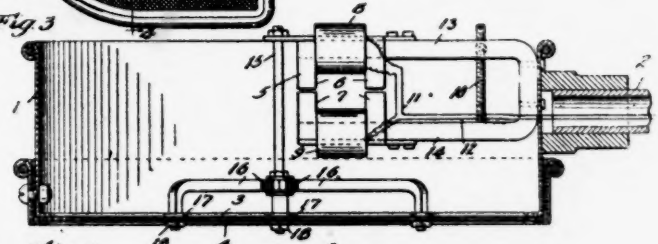
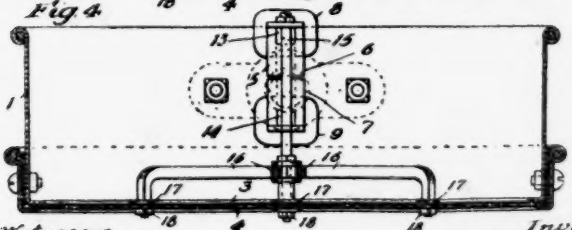


Fig 4.



Witnesses:
Wm Geiger
H. Whitney

Inventor:
William Lindsay
By Munday, Evarts, Adcock & Clarke
Attorneys

UNITED STATES PATENT OFFICE.

WILLIAM LINDSAY, OF CHICAGO, ILLINOIS.

ENAMELING-POWDER DISTRIBUTER.

Specifications of Letters Patent.

939,918. Patented Nov. 9, 1909.

Application filed July 6, 1909. Serial No. 505,982.

To all whom it may concern:

Be it known that I, WILLIAM LINDSAY, a citizen of the United States, residing in Chicago, in the county of Cook and State of Illinois, have invented a new and useful Improvement in Enameling-Powder Distributers, of which the following is a specification.

My invention relates to devices for sifting powdered enameling material over the surface of bath tubs and other vessels in the manufacture of enameled iron bath tubs or other articles.

Heretofore in sifting and distributing enameling powder over heated bath tubs or other vessels to be enameled, the whole sifter including the body or vessel and its long handle has been generally shaken by a pneumatic hammer operating to rapidly tap upon the handle of the sifter; and considerable difficulty, annoyance and discomfort are experienced by the operator, owing to the constant and rapid vibrations to which the instrument which he holds in his hands is subjected, the same also rendering it difficult for the workman to properly and evenly distribute the enameling powder. The necessity of shaking or vibrating the whole sifter and its contents also materially increases the power necessary for the work.

The object of my invention is to provide an enameling powder distributing device in which the sifter vessel itself, (including the handle thereof) will be free from vibration, thus rendering it more convenient and comfortable for holding in the hands, and also enabling the workman to have better control over the sifting operation, and also enabling the work to be done with a minimum of power.

My invention also consists in the novel construction of

parts and devices and in the novel combinations of parts and devices herein shown and described.

In the accompanying drawing forming a part of this specification, Figure 1 is a side elevation of an enameling powder distributing device embodying my invention. Fig. 2 is a plan view. Figs. 3 and 4 are sections on lines 3—3 and 4—4 of Fig. 2.

In the drawing, 1 represents an enameling powder container having the customary long handle 2, preferably rigidly secured thereto, by which the workman holds the container in his hands and moves it about over the hot bath tub or other article to be enameled. The container 1 is provided with a fine mesh wire sieve bottom 3, and also below said sieve or distributer bottom 3 with a flexible coarse mesh wire support 4 for said sieve or distributer bottom 3.

Mounted rigidly upon the container 1 and preferably inside the same and above the sieve or distributer bottom 3, I mount an electromagnet 5, preferably of horse shoe type, and adapted to have its two poles 6, 7 momentarily brought in contact to break the electric circuit. The two arms of the electromagnet have the customary windings 8, 9 and are also furnished with an adjusting screw 10 for regulating and adjusting the distance apart of the poles 6, 7.

11, 12 are the electric circuit wires connecting with the windings 8, 9 on the cores or arms 13, 14 of the electromagnet. The horse shoe electromagnet is preferably vertically arranged or substantially at right angles to the plane of the sieve or distributor bottom 3 of the container. The movable member armature or pole of the electromagnet, preferably the upper pole, is connected to the flexible coarse wire support 4 by means of a rod or other connection 15, preferably having a plurality of divergent arms 16 at its lower end furnished with buttons 17 to bear upon the sieve or distributer bottom 3 and with nuts 18 which clamp the flexible wire coarse mesh support 4 to the connection 15, and thus cause minute up and down vibrations to be communicated thereto and to the fine mesh wire sieve bottom 3 and to the enameling powder in the container by the action of the electromagnet. The electric circuit is preferably an alternating one, as this renders unnecessary any contact maker or breaker other than the poles of the electromagnet because with an alternating

current the reversing of the current also reverses the polarity of the limbs of the horseshoe magnet, and at the minute interval between each reversal the limbs of the magnet are left substantially without polarity or magnetic property so that they tend to spring back to their normal position, or their position when the current is entirely cut off. The handle of the container is preferably furnished with an electric switch 19 for connecting and disconnecting the electric current. 1

The coarse wire mesh support 4 is made of a large comparatively stiff though slightly flexible wire, preferably of 20 gage and the mesh is preferably about one quarter inch mesh so as to give support to the fine mesh wire sieve bottom 3 of the container at numerous points and communicate to said fine wire mesh sieve bottom the extremely minute and rapid vibrations imparted to the wire support 4 by the electromagnet. 2

The sieve bottom 3 is preferably of very fine wire about No. 33 wire gage and it is preferably of about 40 mesh or 40 wires to the inch. The mesh of the sieve bottom 3 may, however, be varied according to the nature of the enameling powder to be sifted.

I claim:— 3

1. An enameling powder distributer consisting in a container having a long rigid handle adapting it to be held in the hands of the workman and moved about over the heated bath-tub or article to be enameled, and provided with a fine mesh wire sieve bottom and a coarse mesh support therefor, an electromagnet having a movable member and a connection between the movable member of the electromagnet and said coarse mesh support, substantially as specified.

2. An enameling powder distributer consisting in a container having a long rigid handle adapting it to be held in the hands of the workman and moved about over the heated bath tub or article to be enameled, and provided with a fine mesh wire sieve bottom and a coarse mesh support therefor, an electromagnet having a movable member and a connection between the movable member of the electromagnet and said coarse mesh support, said connection having a plurality of divergent arms, substantially as specified. 4

1 3. An enameling powder distributer consisting in a container having a long rigid handle adapting it to be held in the hands of the workman and moved about over the heated bath tub or article to be enameled, and provided with a fine mesh wire sieve bottom and a coarse mesh support therefor, an electromagnet and a connection between the movable member of the electromagnet and said coarse mesh support, said electromagnet being of horse-shoe type, and one of its poles being a movable member to which said connection is attached, substantially as specified.

2 4. An enameling powder distributer consisting in a container having a long rigid handle adapting it to be held in the hands of the workman and moved about over the heated bath tub or article to be enameled, and provided with a fine mesh wire sieve bottom and a coarse mesh support therefor, an electromagnet and a connection between the movable member of the electromagnet and said coarse mesh support, said electromagnet being of horse shoe type, and one of its poles being a movable member to which said connection is attached, and an adjusting means between the two arms of said horse shoe magnet, substantially as specified.

3 5. An enameling powder distributer consisting in a container having a long rigid handle adapting it to be held in the hands of the workman and moved about over the heated bath tub or article to be enameled, and provided with a fine mesh wire sieve bottom and a coarse mesh support therefor, an electromagnet and a connection between the movable member of the electromagnet and said coarse mesh support, said electromagnet being of horse shoe type, and one of its poles being a movable member to which said connection is attached, and an alternating current
4 electric circuit for said magnet to cause the limbs of said magnet to be alternately and reversely polarized at each reversal of the current, substantially as specified.

6. An enameling powder distributer comprising in combination, a container having a handle and a fine mesh sieve bottom and a movable support for said bottom contacting therewith at a plurality of points, an electromagnet having a movable member and a connection between the movable

member of the magnet and said support, substantially as specified. 1

7. An enameling powder distributer comprising in combination, a container having a handle and a fine mesh sieve bottom and a movable support for said bottom contacting therewith at a plurality of points, an electromagnet having a movable member and a connection between the movable member of the magnet and said support, said electromagnet being a horse shoe one arranged in a vertical plane in the container above said support, substantially as specified.

8. An enameling powder distributer comprising in combination, a container having a handle and a fine mesh sieve bottom and a movable support for said bottom contacting therewith at a plurality of points, an electromagnet having a movable member and a connection between the movable member of the magnet and said support, said electromagnet being a horse shoe one arranged in a vertical plane in the container above said support, and an alternating electric circuit for said magnet, substantially as specified. 2

WILLIAM LINDSAY.

Witnesses:

EDMUND ADCOCK,

H. M. MUNDAY. 3

4

1 PETITIONER'S EXHIBIT No. 137.

Filed Nov. 3, 1910.

Exhibit A-7

COPY.

EDWIN L. WAYMAN.

W-6181013-R
June 18, 1910.

Chandler Pump Company,
Cedar Rapids, Iowa.

2 Gentlemen:

I am in receipt of your telegram of to-day stating that you do not feel justified in signing at present. I trust you will see your way clear to execute this agreement within the next few days as it covers a matter which is entirely for the jobbers benefit. The Cedar Rapids Pump Company of your city, have executed the agreement, and I hope you will co-operate immediately with your local competitors, which will be much more advantageous than a continuous cut market.

Will you not telegraph me upon receipt of this letter
3 that you will execute the agreement in order that the matter may be adjusted in your city at once.

Yours very truly,

E. L. WAYMAN.

4

PETITIONER'S EXHIBIT No. 138.

Filed Nov. 3, 1910.

BAILEY-FARRELL MFG. CO.
Third. Ave. and Ross Street.
Pittsburg, Pa.
June 1, 1910

Order No. C 2309

Day Ward Co.,
Warren, O.

Please ship us at once via

3-20x30 plate 1045 roll rim sinks with right hand end piece, less bibbs, air chambers and trap.

Send bill and bill lading to this office promptly. Advise of receipt of order and date shipment will be made Mark number of this order on your bill.

Acknowledged .....

Wrote	*Shipment Promised*
6/28	

Rec'd Invoice.....

Received on this Order.

.....

.....
Ordered for

1 **PETITIONER'S EXHIBIT No. 139.**

Filed Nov. 3, 1910.

All Agreements Contingent upon Strikes, Accidents and other Causes Beyond our Control.

GOOD
ENAMELED WARE

W. C. Winfied, Pres.
A. G. Ward, Vice Pres.
2 Geo. E. Day, Sec. and Treas.

Code: Western Union
Cable Address "Dayward"
Telephones.
Bell No. 324. Independent No. 24.

THE DAY-WARD CO.
Warren, Ohio, U. S. A.

June 6th, 1910.

Bailey-Farrell Mfg. Co.
Pittsburg, Pa.

Gentlemen:—

We acknowledge receipt of your order #2309 of June 1st.

3 In regard to this order, would say that owing to the earnest solicitation of the Jobbers to establish a resale price, we, as well as the other Manufacturers, agreed not to take any business beyond June 1st, so that the resale price could be put into effect at that time.

Under our agreement and terms with the Licenses, we are not permitted to fill this order at any other price than that mentioned in the Jobbers' Agreement which we mailed you Saturday. If this is satisfactory, kindly sign this Agreement and return to us, and we will fill the order.

Would advise that we are today writing a large number
4 of our customers practically along the same line as this. Would also say that the success of the Resale Agreement, to a great extent, depends upon the hearty co-operation of the Jobbers. It will perhaps be a little hard the first thirty or sixty days in getting it started, but with your co-operation, as well as that of the other Jobbers, we think there is no reason why this will not go through.

Yours truly,
THE DAY-WARD CO.
Per A. G. WARD.

W/F

PETITIONER'S EXHIBIT No. 140. 1

Filed Nov. 3, 1910.

UNITED STATES SANITARY MFG. CO.

Enameled Iron Baths
and
Plumbing Goods.

General Offices
Arrott Building.

Works,
Monaca, Pa.

Pittsburgh, Pa. June 7, 1910.

The Bailey-Farrell Mfg. Company, 2
Pittsburg, Pa.

Gentlemen:

We received in this mornings mail your order #2389, but as we have not as yet received your signed license contract and our license agreement with Mr. Wayman makes it imperative that we receive this contract before entering any orders, we cannot enter this order until we receive same.

Yours very truly,
UNITED STATES SANITARY MFG. CO.

A. H. CLINE, Jr. 3
Secretary.

AHC-R.

4

1 **PETITIONER'S EXHIBIT No. 141.**

Filed Nov. 4, 1910.

EDWIN L. WAYMAN
1509 Arrott Building
Pittsburgh

Feb. 7, 1910.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

2 Referring to the informal discussion that took place after the Regular Meeting regarding Re-sale Prices and License Arrangement.

Have you any patents that you would be willing to assign along with those owned by the other Companies, for the purpose of this Arrangement. If such is the case will you kindly send me the following information as quickly as possible?

Schedule of Patents

Pat. Number	*Date*	*Inventor*	*Title*

3 *Applications— not issued*

Docket Number	*Serial Number*	*Title*

In order to get a preliminary statement of each Manufacturer's ideas, will you kindly write me regarding the following:

1. Using the Standard Sanitary Mfg. Co.'s published prices as a basis, what differential, if any, do you believe your Company would require in order to obtain its fair share of the business?

Preferential Discount

4 Schedule 1. First Grade 5 year Guaranteed Baths

" 2. All other Grades of Baths.

" 3. Small Ware—Lavatories, etc.
(Note: On what competitive types of Lavatories do you feel you could get the same price as the Standard.)

Schedule 4. Sinks—F.R. and R.R.

2. How many active furnaces do you anticipate operating the balance of the year. This information is necessary in order to figure out the total amount of royalty.

Thanking you in advance for this information as promptly as possible, I am,

(Signed) E. L. WAYMAN.

Preferential Selling Discounts to Jobbers asked for by the various Manufacturers.

Schedule 1—5 year Guaranteed Baths.
" 2—2 "
" 3—All other Grades of "
" 4—Small Ware—Lavatories, etc.
" 5—Sinks—R.R. & F.R.

Manufacturers	Schedules 1	2	3	4	5
Standard	None	None	None	None	None
Wolff	"	"	"	"	"
U. S.	"	"	"	"	"
Kohler	"	"	"	"	"
Union	"	"	"	"	"
Mott					
Colwell	"	"	"	"	"
Barnes	"	"	"	"	"
Cahill					
Clymer	"	"	"	5	5
Blairsville	5	5	5	5	5
McVay & Walker	5	5	5	5	5
Weiskittel	5	5	5	5	5
National	5	None	None	5	2½
Iron City					
Humphryes					
Day-Ward					
McCrum-Howell	5	2½	None	5	None
Wheeling	?	?	?	?	?

	Patent. No.	*Date*	*Inventor*	*Title*
Barnes Mfg. Co.	838,702	Dec. 18-1906		1. Boltless Sink Strainer and Coupling.
	945,457	Jan. 4-1910		2. Sink Strainer.
	846,022	Mar. 5-1907		3. Conc. Hanger

PETITIONER'S EXHIBIT No. 142.

Filed Nov. 4, 1910.

EDWIN L. WAYMAN
1509 Arrott Building
Pittsburgh

W-2251009-1
Feb. 25th, 1910.

Mr. W. J. Kohler,
c/o J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

Can you attend a Meeting next Wednesday Morning at Chicago of the Companies to whom this letter is addressed for the purpose of trying to arrive at some definite recommendations to be made to the Special Meeting of all the Companies which is to be called the first part of next month at New York regarding Licenses and Re-sale Prices?

The market conditions are such that this matter ought to be settled without further delay and I would thank you to telegraph me not later than Monday if you can attend.

Yours very truly,

(Signed) E. L. WAYMAN.
Commissioner.

Copies to

H. M. Hoelscher,	L. Wolff Mfg. Co.
F. J. Torrance,	Standard Sanitary Mfg. Co.
A. H. Cline, Jr.	U. S. Sanitary Mfg. Co.
W. J. Kohler,	J. M. Kohler Sons Co.
H. T. Gates,	McCrum-Howell Co.
J. B. Murphy,	J. M. Kohler Sons Co.

PETITIONER'S EXHIBIT No. 143.

Filed Nov. 4, 1910.

In order that there may be some legal arrangement for holding together the various manufacturers of Sanitary Enameled Ware and enable them to secure business on a continuous and profitable basis at price deferentials that will insure each a fair proportion of the business, I wish to ask if your Company would be amenable to enter into a licensed patent arrangement with the writer along the lines of the attached proposed arrangement.

Such an arrangement would not interfere with the Association as it exists or the purpose for which is was organized. It does not mean a selling company or a pool, but simply legalized selling co-operation. It would be my idea to create a list of preferentials for the various Companies from a standard price list and these preferentials subject to change as conditions varied, so that each Company would be treated fairly in proportion to the whole.

I have taken this matter up with some of the companies verbally and they are very much in favor of it. Will you kindly look over the attached papers and let me have your ideas in the matter as early as possible? If the matter appeals to those with whom I have not talked as favorably as I think it will, I will arrange to call a meeting for those interested with the idea of putting the matter into a working arrangement.

"PROPOSED ARRANGEMENT FOR LICENSED MANUFACTURERS."

The execution of a License Agreement with E. L. Wayman for the manufacture of Sanitary Enameled Iron Ware under patents owned by him covering Air and Electric Dredges.

The manufacturers to be divided into three classes according to the proportion their business bears to the whole and to execute licenses to be known as follows and on the following terms:

"Class A	Manufacturers	License	Royalty	$1500. per month.
Class B	"	"	"	1200. per month.
Class C	"	"	"	800. per month.

At the end of the third month the above royalties, subject to 95% rebate if the terms of the license have been complied with and at the termination of each succeeding month a like rebate.

75 per cent. of the penalties deducted from the manufacturers violating the agreement, to be divided among the Licensees in good standing for the month in proportion to the sum each Company's royalties bear to the whole.

The division of the ware into four schedules as follows:

Schedule 1 First Class Guaranteed Baths.
" 2 All other grades of Baths
" 3 Small Ware—Lavatories, etc.
" 4 Roll Rim Sinks, One and Two Pieces, Flat Rim Sinks.

Price preferentials to be arranged something like the following:

Class A	Manufacturers	Net Prices
" B	"	2½% discount
" C	"	5% "

Schedule 1 First Grade Guaranteed Baths
" 2 All other Grades of Baths
" 3 Small Ware—Lavatories, etc.
" 4 Roll Rim Sinks 1 and 2 Piece-Flat Rim Sinks.

Schedules	1	2	3	4
	Price Class			
Blairsville Enameled Ware Co.	C	B	C	B
Barnes Mfg. Co., The	C	B	A	A
Cahill Iron Works, The	A	A	A	A
Colwell Lead Co.,	C	B	B	B
Clymer Mfg. Co.,	C	B	C	B
Day-Ward Co., The	C	A	B	B
Humphryes Mfg. Co.,	C	A	B	B
Iron City Mfg. Co.	C	A	B	B
Kohler Sons Co., J. M.	A	A	A	A
Mott Iron Works, J. L.	A	A	A	A
McVay & Walker	C	C	C	C
McCrum-Howell Co.,	C	A	B	B
National Sanitary Mfg. Co.,	C	B	B	B
Standard Sanitary Mfg. Co.	A	A	A	A

Union Sanitary Mfg. Co.,	C	A	B	B	1
United States Sanitary Mfg. Co.	A	A	A	A	
Wolff Mfg. Co., L.	A	A	A	A	
Weiskittel & Son, A.	C	A	B	B	
Wheeling Enameled Iron Co.	C	A	B	B	

Class	A	Manufacturers	$1500.00	Monthly	Royalty
"	B	"	1200.00	"	"
"	C	"	800.00	"	"

	Monthly Royalty			
Class—	A	B	C	
Blairsville Enameled Ware Co.			$800.	2
Barnes Mfg. Co., The			800.	
Cahill Iron Works, The	$1500.			
Colwell Lead Co.,			800.	
Clymer Mfg. Co.			800.	
Day-Ward Co., The		$1200.		
Humphryes Mfg. Co.		1200.		
Iron City Mfg. Co.	1500.			
Kohler Sons Co., J. M.	1500.			
Mott Iron Works, J. L.	1500.			
McVay & Walker,			800.	
McCrum-Howell Co.,		1200.		3
National Sanitary Mfg. Co.,		1200.		
Union Sanitary Mfg. Co.		1200.		
United States Sanitary Mfg. Co.	1500.			
Wolff Mfg. Co., L.	1500.			
Weiskittel & Son, A.		1200.		
Wheeling Enameled Iron Co.			800.	
	$9000.	$7200.	$4800.	

95% Rebate leaves 5% yearly=$12,600.00

The publication of a Standard Loose Leaf Price Book by the Licensor. 4

The proposed arrangement with reference to royalties would aggregate a total net amount to the Licensor of $12,600, yearly to cover the expense of salary, traveling, printed matter and office expense, in accordance with the attached sheet.

1 THIS AGREEMENT, Made in duplicate this day of by and between E. L. Wayman, a resident of the City of Pittsburgh of the State of Pennsylvania (hereinafter called the "Licensor"), party of the first part, and

a corporation organized and existing under the laws of the State of (hereinafter called the "Licensee"), party of the second part,

WITNESSETH:

2 THAT WHEREAS, the Licensor has this day granted to the Licensee a non-exclusive Class ( ) license to make and sell Sanitary Iron Enameled Ware under the following United States Letters Patents, to wit:
upon the terms and conditions in said license and license agreement set forth; and

WHEREAS, the Licensor owns or has the right to grant licenses under the following additional United States Letters Patent, to wit:

AND, WHEREAS, the Licensee is desirous of securing a license of the character and upon the terms and conditions hereinafter set forth under such last enumerated Letters
3 Patent,
for the manufacture and sale of the Licensor's

NOW, THEREFORE, for and in consideration of the covenants of this agreement, the parties hereto agree as follows:

The Licensor hereby grants to the Licensee, subject to the provisions hereinafter contained, a non-exclusive license to practice in the manufacture of Sanitary Iron Enameled Ware, the processes patented in said several Patents, to make and use in such manufacture the machines and devices patented in said Patents and to use and sell
4 goods so made; the said license being non-assignable and non-transferable, except to successors to substantially the entire good-will and business of the Licensee. This License shall be available for the Licensee, its successors or assigns only so long as it or they are not engaged in the manufacture of similar lines.

CLAIMS The Licensor hereby agrees to suspend his claims against the Licensee and its customers for damages or profits which he may be entitled to receive for any claim for any past infringe-

ment of said patents by said Licensee, as long as said Licensee continues to perform all of its obligations under this contract. 1

So long as the Licensee operates under this license or any renewal thereof and keeps and performs all of the obligations of said Licensee herein contained, the Licensor agrees not to bring action against said Licensee because of its use of any machines, methods or processes now or heretofore used by said Licensee in the manufacture of enameled ware, and for which patents have already been issued to said Licensor, and to waive any and all claims under any letters patent on any machines, devices, or processes now in use by said Licensee, and to grant to said Licensee full use and enjoyment thereof. 2

ROYALTIES

The Licensee shall pay the following royalties for License herein granted, to wit:
Class A License $1500. per month.
Class B License $1200. per month.
Class C License $ 800. per month, payable on or before the 5th day of each month as follows: 5% in cash, 95% in 60 days promissory notes without interest. 3

CHANGE OF LICENSE CLASS

This agreement is entered into as a Class ( ) License, but may be changed to either Class ( ) or Class ( ) when notified in writing by the Licensor, upon two-thirds vote of all the Companies operating under a similar License or upon the recommendation of an Executive Committee appointed by the various Companies for this purpose. It shall be the particular and special charge of this Committee to consider any complaints which may be made by any member to the effect that the actual working of the classifications under which any particular Company may be working is to the detriment of the others and to make recommendations which may tend to remedy such inequality, it being the intent that from time to time such measures as may be deemed equitable 4

for the relief of any Licensee, may be adopted as provided for.

All terms, conditions, regulations and prices governed by this agreement now established by the Licensor and set forth in schedules attached to and made part hereof, shall be in force and effect until other terms, conditions, regulations and prices are substituted, therefore by the Licensor which substitution he is entitled to make from time to time, hereafter by notice in writing to the Licensee. The Licensee covenants to adhere to and maintain such terms, conditions, regulations and prices as may be established by the Licensor from time to time; the Licensor to be governed by competition in the regulation of prices and shall not name such prices that will prohibit the manufacture and sale of the products being manufactured under the patents enumerated.

PRICES

If at the end of the third month of the first year (said year beginning) it shall appear that the Licensee has during the first month complied with all the terms of this agreement, the Licensor shall credit the Licensee upon its next succeeding payment hereunder the following rebates from the royalties paid for said License for said first month's royalties, to wit; 95% of the amount originally paid by the Licensee. At the termination of each succeeding month of the said License, if it shall appear that the Licensee has fully complied with the terms of this agreement during the second preceding month, the Licensor shall make a similar rebate in respect of the royalties paid by the Licensee during the second preceding month.

ROYALTY REBATES

In case of failure on the part of the Licensee to comply fully with the terms of this agreement during any month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited (as hereinafter provided for) as penalty for said violation and shall at once notify the Licensee to that effect.

PENALTIES

Penalties shall be deducted from all unpaid re-

bates at the rate of $1000.00 for each violation. 1

The restrictions herein contained, as to the prices at which Enameled Ware is to be sold shall not apply to Enameled Ware sold and exported to foreign countries. No existing contracts for the sale of Enameled Ware extending beyond January 1st, 1910, shall be recognized by the parties hereto.

EXPORT

Nothing in this agreement shall be construed to prevent the Licensee or its customers from exercising all the rights and privileges in any such territory as are at present enjoyed by or shall be extended to any other License or its customers under a similar license. 2

The License admits the validity of said several Patents enumerated herein, for the purpose of this agreement and license only, and it is further agreed that upon the termination of this agreement and license for any cause the Licensee shall not be estopped to deny the validity of the said Patents or any of them.

VALIDITY OF PATENTS

The Licensor agrees that it will, upon the written request of at least three-quarters in number of the Licensees at any time holding licenses similar to this license, use all legal and equitable means to protect the License in the full use and enjoyment of the rights under this agreement and license from all non-licensed parties using any of said machines, processes, or devices, or from any sales infringing said patents by customers or any such parties either by suits or by bringing them under a similar license. If, however, the Licensor refuses to take such action against such non-licensed parties, other customers, or users of such non-licensed goods, for ninety days after being requested so to do, as before provided, this license shall be voidable at the election of the License communicated in writing to the Licensor, and the Licensee thereafter shall be released from all obligations hereunder, and shall not hereafter be estopped to deny the validity of said Patents or any of them. 3

PROTECTION OF LICENSEE 4

1

LABELS

No goods manufactured under this license shall be sold, unless they bear a registered label owned by the Licensee and in addition thereto a license tag or label approved by the Licensor, which license tag or label shall be placed in a visible position on all good made hereunder and sold by the Licensee.

This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of five (5) years from the date hereof, unless

2

previously terminated as herein provided, and if the Licensee faithfully performs the conditions hereof throughout the contract period, this agreement and license shall be renewed at the expiration of said period, at the option of the Licensee, for a further term of five years on conditions not less favorable than herein expressed.

This agreement, however, may be cancelled by the Licensor by written notice upon repeated breaches by the Licensee of any of the covenants

3

herein contained; and shall terminate in any event upon the termination (for any cause whatsoever) of the License Agreement mentioned in the first recital of the preamble hereof.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year above written.

.....

.....

4

1. This Agreement is entered into as a Class ( ) License with Selling Price Preferentials as follows:

Selling discounts from prices established by the Licensor.

Schedule 1 First Grade Guaranteed Baths
" 2 All other grades of baths.
" 3 Small Ware—Lavatories, etc.
" 4 R. R. Sinks and 2 piece Flat Rim Sinks

2. Subject to the provisions hereinbefore named.

3. And 75 per cent. of such penalties will be divided among the Licenses, in good standing during the month, in proportion to the sum each Company's royalty bears to the whole.

PETITIONER'S EXHIBIT No. 144.

Filed Nov. 4, 1910.

THE WESTERN UNION TELEGRAPH COMPANY.

Received at Sheboygan, Wisc.
48.ch.5pm.od.z.100 paid.

Ht—New York City, N. Y. Mar. 29-10. foned 519 P. M.
Walter J. Kohler, Pres. J. M. Kohler Sons Co., City. "L."

All manufacturers except you and Weiskittel Represented at meeting Weiskittel here to-night fifteen members here in person balance by letters and wire after thorough consultation with attorney Jackson of Noble Jackson, and hubbard we are all satisfied entire proposition is absolutely legal and more feasible and easier to handle than electrical proposition which has been in force several years sense of meeting favorable to license agreement and resale proposition 91 per cent. of production voting favorable some await consultation and consent of their associates or counsel members desire your wire answer in time for to-morrows meeting called for ten AM .....

E. L. WAYMAN.

PETITIONER'S EXHIBIT No. 145.

Filed Nov. 4, 1910.

EDWIN L. WAYMAN
1509 Arrott Building
Pittsburgh

W. J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

March 31st, 1910.

Dear Sir:—

I attach copies of the preliminary agreements, with signatures attached, that were entered into at the Special Meeting of the Manufacturers held at New York March 29th and 30th.

In accordance with the Resolution adopted for the appointment of a special Committee to conclude the matter, the following gentlemen were elected by ballot.

T. R. Barnes
A. H. Cline, Jr.
Howard T. Gates
H. M. Hoelscher
F. J. Torrance.

This Committee will begin a special ten day session at Pittsburgh beginning probably the latter part of next week. Will you, therefore, kindly study over carefully the various paragraphs in the License Agreement and Jobbers' Agreement, and if you have any suggestions or amendments to offer, kindly write me *in detail* at once or make arrangements to appear before the *Committee*. In case you decide to take up the matter in person please write me beforehand regarding such matters as you may have to offer, and I will advise you the date on which the Committee will meet with you.

In the absence of any reply from you, the Committee will take it for granted that the License and Jobbers Agreements as printed, copies of which you have, are satisfactory to you, together with the "differentials" allotted to your Company in accordance with the attached sheet. If the differentials allotted your Company do not meet with your approval please state fully your views and reasons.

Your very prompt attention to this entire matter is re-

Union Sanitary Mfg. Co. — C. E. Gates,
Wheeling Enameled Iron Co. — J. E. Wright, Pres. Per E. L. Wayman.
Clymer Mfg. Co. — W. A. Guthrie.

The following "Preferential Discounts" from the selling Prices established by the Licensor will be allowed the various Manufacturers on Sales to Jobbers only.

Schedule 1—5 year Guaranteed Baths.
" 2—2 " " " "
" 3—All other Grades of Baths.
" 4—Small Ware—Lavatories, etc. & RR Sinks.
" 5—Sinks, Flat Rim.
" 6—Competitive Lavatories—552-562 inclusive 565 and 535.

Manufacturers	Schedules. 1	2	3	4	5	6
Standard	None	None	None	None	None	None
Wolff	"	"	"	"	"	"
U. S.	"	"	"	"	"	"
Kohler	"	"	"	"	"	"
Barnes	"	"	"	"	"	"
Cahill	"	"	"	"	"	"
Mott	"	"	"	"	"	"
Union	5%	2½%	"	2½%	"	"
Colwell	5%	2½%	"	2½%	"	"
Clymer	5%	2½%	"	2½%	"	"
Blairsville	5%	2½%	"	2½%	"	"
McVay & Walker	5%	2½%	"	2½%	"	"
Weiskittel	5%	2½%	"	2½%	"	"
National	5%	2½%	"	2½%	"	"
Iron City	5%	2½%	"	2½%	"	"
Humphryes	5%	2½%	"	2½%	"	"
Day-Ward	2½%	2½%	"	2½%	"	"
McCrum-Howell	5%	2½%	"	2½%	"	"
Wheeling	5%	2½%	"	2½%	"	"

The above "Preferential Discounts" shall not apply on sales to the Plumber when made either by the Jobbers or direct by the Manufacturers.

All makes of Goods shall be sold to the Plumber at the Resale Prices that may be established in the sheets.

PETITIONER'S EXHIBIT No. 146.

Filed Nov. 4, 1910.

EDWIN L. WAYMAN
1509 Arrott Building
Pittsburgh

April 16th, 1910.

Mr. W. J. Kohler
c/o J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

The Price and Schedule Committe created at the meeting held in New York City, for the purpose of concluding the License and Resale Agreements, have just completed a special session held at Mt. Clemens, Mich. beginning April 8th. and ending April 14th.

All the details of the License Agreement and Jobbers' Agreement were thoroughly gone into and considered, every paragraph being carefully weighed; the Committee making such additions or eliminations as they considered advisable.

Some changes were made in the arrangement of the Schedules as you will note by the attached copy as well as some changes in the differentials. All members who had suggestions to make or those whom the Committee desired to see, appeared before them and after going into all details and bringing up every possible question they went away entirely satisfied after having presented the Committe with letters, several of which are given below:

"We hereby accept your proposition as to a License Agreement under Dredger Patents by which we are permitted to use said Patents, and for the use of which we agree to pay you as per terms of said License Agreement at the rate of $5.00 per day per furnace in operation, less such rebates that you may hereafter decide upon; it being understood that all Licensees shall be upon the same uniform schedule of prices per furnace and the same uniform charge and rebate. We further agree to maintain any and all stipulations and provisions set forth in the schedules and also to the different differentials established for our Company as shown in the attached sheet."

1 "After having met with the Committee and gone into the matter very carefully, we have given it due consideration and in the matter of harmony, we will waive all demands which we made in our previous letter as to schedule, and will agree to manufacture all ware which we make under one of the three dredger patents and we will also agree to the schedule of differentials in prices as submitted by your Committee, and trust that our action will enable you to harmonize other interests."

2 The Committee will hold additional Meetings Tuesday April 19th. at Pittsburgh and Thursday April 21st., at New York City, which Meetings are believed will finish all the preliminaries. You may, therefore, expect to receive a notice calling a General Meeting to be held in New York City during the first week in May for the purpose of executing the final License Agreement Papers which will put this and the Re-sale proposition into effect on June 1st., which date is being expected and insisted upon by the Jobbers throughout the country. The Papers you will be asked to sign at this meeting will not be subject to any further changes. They embrace the best suggestions made to the 3 Committee, have been passed on by the best legal talent in the Country and it will not be feasible to make any additional changes in order to meet the ideas of the attorneys of the individual Companies. Will you, therefore, come prepared to sign or bring such principals with you that have authority to conclude the matter?

Yours very truly,

E. L. WAYMAN.

4 The following "Preferential Discounts" from the Selling Prices established by the Licensor will be allowed the various Manufacturers on Sales to Jobbers only.

Schedule 1 —5 year Guaranteed Baths
" 2 —2 " " "
" 3 —All other grades of Baths
" 4 —Small Ware—Lavatories, etc.
" 4½—R. H Sinks, Slop Sinks, Sink Backs, Drain Boards, Factory Sinks, Urinals, Hoppers, Laundry Trays.
" 5 —Sinks, flat rim.
" 6 —Competitive lavatories, 558, 559, 561, 562
" 7 —Closet tanks—High and Low

SCHEDULES.

MANUFACTURERS. 1

	1	2	3	4	4½	5	6	7
Standard	None	None	None	None	None	None	None	None
Wolff	"	"	"	"	"	"	"	"
U. S.	"	"	"	"	"	"	"	"
Kohler	"	"	"	"	"	"	"	"
Barnes	"	"	"	"	"	"	"	"
Cahill	"	"	"	"	"	"	"	"
Mott	"	"	"	"	"	"	"	"
Union	5%	2½%	"	2½%	2½%	"	"	"
Colwell	5%	2½%	"	2½%	2½%	"	"	"
Clymer	5%	2½%	"	5%	5%	2½%	2½%	2½%
Blairsville	5%	2½%	"	5%	5%	2½%	2½%	2½%
McVay & Walker	5%	2½%	"	5%	5%	2½%	2½%	2½%
Kerner	5%	2½%	"	5%	5%	None	2½%	None
Weiskittel	5%	2½%	"	2½%	2½%	None	None	None
National	5%	2½%	"	2½%	2½%	None	None	None
Humphryes	5%	2½%	"	2½%	2½%	None	None	None
Day-Ward	5%	None	"	2½%	2½%	None	None	None
McCrum-Howell	5%	2½%	"	5%	2½%	None	None	None
Wheeling	5%	2½%	"	2½%	2½%	None	None	None

2

The above "Preferential Discounts" shall not apply on sales to the Plumber when made either by the Jobbers or direct by the Manufacturers.

All makes of goods shall be sold to the Plumber at the Resale Prices that may be established in the sheets. 3

4

1 PETITIONER'S EXHIBIT No. 147.

Filed Nov. 4, 1910.

Design and Durability
unsurpassed.
Trade "Standard" Mark.

STANDARD SANITARY MFG. CO.
General Offices.
Pittsburg, U. S. A.

In reply refer to No. A50700U

2 "Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Theo. Ahrens, President.

Pittsburgh, Pa. May 7, 1910.

Mr. Robert Kohler,
Of J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear sir:—

3 Mr. Torrance and I have just returned from New York, where yesterday at a full and representative meeting of manufacturers we have all signed up and entered into the license agreement and re-sale plan on enameled ware which, as you know, has been under consideration for several months.

Every manufacturer present, after a full and free discussion of the whole plan, signed the agreement without any proviso. We hope to have the plan in force by June 1st but all of us are already obligated to go ahead.

I regret very much that you did not attend this meeting
4 and Mr. Torrance and I would like to meet you in Chicago the latter part of next week if it is agreeable to you. We want to discuss this plan with you and see if we cannot get you to reconsider and join in with the rest of us. The Iron City Concern and yourselves are the only people of importance who have not signed. We think you ought to give this plan a fair trial.

During the last three months I have traveled extensively all over the United States and have interviewed a great many of the jobbers on this re-sale proposition. The jobbers are

almost a unit in favor of it. The Niagara Falls meeting passed a resolution unanimously approving it. The local Associations in a number of cities have demanded that we put such a re-sale plan in effect. It is not possible to carry through a re-sale price without a strong organization among the manufacturers and without some manner of controlling prices. The license agreement we have entered into with Mr. Wayman offers a legitimate and lawful way of doing this. We have submitted the plan to our attorney and he had advised us that it is all right. 1

I also had a thorough explanation from Mr. Jackson and so far as I can see, there are no legal difficulties in the way. 2

Let me explain, please, that so far as the Standard Sanitary Manufacturing Company is concerned, we would have preferred to conduct our business independently and without such an arrangement as we are now in. We earned over $1,000,000.00 net last year and feel that we can take care of ourselves under any and all conditions.

There are two reasons why we went into this agreement:

First, because our customers all over the United States have demanded it.

Next, owing to the great amount of trouble which the jobber has had with enameled iron ware and the small margin of profit on which he was compelled to sell it, there is a growing disposition on the part of the jobbers to handle and push other lines which he can substitute for enameled iron and on which he claims to make a better profit. The re-sale plan offers the jobber a fair profit and will remove the incentive to push other goods. 3

The plan under which we propose to operate is far reaching and leaves no middle ground to stand on. I can assure you that every body is most anxious to have you with us as we need both your advice and counsel and your support.

Please wire me Monday in care of this office and let me know whether you will meet us, and if so, on what day. Friday would suit Mr. Torrance best. 4

Yours very truly,

(signed) THEO. AHRENS,
President.

1 PETITIONER'S EXHIBIT No. 148.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.

General Offices.

Pittsburg, U. S. A.

In reply refer to No. A51826U

"Standard" Porcelain Enameled
Baths and Plumbing Goods
2 office of
Theo. Ahrens, President.

Pittsburgh, Pa. May 18, 1910.

Mr. J. B. Murphy, Vice-Pres.,
J. M. Kohler Sons Co.,
First National Bank Bldg.,
Chicago, Ill.

Dear sir:—

In discussing with you the proposed license and re-sale
3 arrangement during my recent visit to Chicago, I tried to make it plain to you that the principal reason: in fact, the one which really decided us to advocate this plan, was the unanimous demand made by the jobbers of the United States for some such plan and by which they could obtain a better profit on the sale of our product than they now enjoyed.

You seemed to doubt this assertion, which was repeatedly made by me and I regret to say that you seemed to think that we were not sincere or acting in good faith in the whole movement. I am sending you therefore a few of the letters which I wrote to my partners during my recent trip West,
4 and which will indicate how we felt about this subject.

Please note in my letter of March 9th the statement: "I understand that this re-sale proposition is being agitated to a considerable extent and it may be that it will force us to do some things which we would rather not do."

Again on March 21st in my letter to Mr. Torrance, I say: "It is evident from what you write me that we cannot afford to take a position in this matter which would be directly opposed to our customers' wishes, and I am glad to know that

we are working in harmony with the other manufacturers along this line." 1

Again on March 25th from Los Angeles, note the sentence on the second page: "It may be that our customers will force us to go into such a deal."

Again on April 9th from Seattle: "It is such a radical departure from what we have been doing for the last ten years that I am very unwilling to agree to it, but, on the other hand, if we do not do so, we will be blamed by our customers and it may hurt us."

Please note also copy of Mr. Myler's letter of February 2nd. addressed to me.

These letters should convince you that for the past four months we have been debating and discussing this subject among ourselves and that the reason which finally decided us to favor this plan was that we believed it was to our customers' interests to put it through and that we thought that the interest of our customers demanded it. I want to therefore again deny your assertion that I am a philanthropist. I am not but I am interested in the welfare of the people to whom we sell our goods and I believe that it is only good business policy on our part to help them make a profit if we can consistently do so. 2 3

Please return the letters after you have read them.

Yours very truly,

T.A.

President.

[NOTE: The answer to this exhibit is Exhibit No. 155.]

4

PETITIONER'S EXHIBIT No. 149.

Filed Nov. 4, 1910.

May 20th, 1910.

Mr. Theo. Ahrens, Pres.
Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

Dear Sir:—

Acknowledging yours of the 18th, the question of selling our goods lower than the Standard was brought up by you at the La Salle in the presence of Mr. Hoelscher, and you stated this was on the regular two-year guaranteed tub and the price was $11.00, which I did admit. I did say, however, that since I had been engaged in this business for about two and one-half years, you had been the main factor in reducing prices the greater portion of that time.

It is possible that recently, in a few cases, we did quote and sell lower than your price, but only in spots, and nothing of any consequence.

I did not state to you that Mr. Myler's check was sent to equal the $11.00 price on the tub, however. In this case you misunderstood me, but that his check was generally sent to equalize prices.

After this interview at the La Salle hotel, I took up the question with Mr. Kohler, and read to you Monday evening before you left, giving you the exact prices that we made in a few special cases only.

So far as the Eastern market is concerned, one of the principal manufacturers and a very reputable one who does quite a business in the East, stated that there was no bottom to New York prices.

I wish to say that any reductions that we have made have not been wholesale, horizontal reductions the same as your company have made, and are not so damaging to the manufacturer or the trade generally, for that reason.

We note that in the Eastern market you have not given a special rebate beyond the regular printed carload prices to *all the trade*. We do not know that we said to you that in any special market you did this.

As to the man whom you say lies, is it not possible that there is a mistake *somewhere?* We know of no price agree-

ment, and you accused us of selling below your prices, which, in a few cases, we did admit. We believe it is our privilege to do so, owing to your operations in this direction for a very long period.

We omitted to state that in the conversation with Mr. Torrance at the Hotel La Salle, we were accused also of selling our goods in the East on the same basis as many of the inferior class of manufacturers, and from the prices we gave you, and the prices you now accuse us of making, you must admit that you are very badly mistaken.

Yours very truly,

J. M. KOHLER SONS CO.

Vice prest.

[NOTE: This letter answers Exhibit No. 154.]

GOVERNMENT'S EXHIBIT 150.

PETITIONER'S EXHIBIT No. 150.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.
General Offices.
Pittsburg, U. S. A.

In reply refer to No. A51900U

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Theo. Ahrens, President.

Pittsburgh, Pa. May 19, 1910.

RECEIVED
J. M. Kohler Sons Co.
Chicago Office
May 23, 1910
Ans'd .....
Order no .....
Return to Sheb.

Mr. Walter Kohler, Prest.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear sir:—

Since my return to Pittsburgh our Executive Committe has again gone carefully over the proposed license and re sale arrangement and we have decided to go ahead with i and put it through and into effect June 1st.

We write to advise you of this fact and can only expres the hope that you will reconsider your determination not t become a party to this agreement and will join with us i this movement which, if successful, is bound to benefit ou customers greatly as it will insure a fair profit on a line o goods which at this time is fiercely competitive and on whic the profit has been altogether out of proportion to th trouble, annoyance and expense of handling the line.

Yours very truly,

THEO. AHRENS, *President*.

PETITIONER'S EXHIBIT No. 151.

Filed Nov. 4, 1910.

May 21st, '10.

Mr. Theodore Ahrens, Pres.,
Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

Dear Sir:—

Acknowledging your letter of May 19th with enclosed copy of your letter of May 18th to Mr. Murphy at Chicago. We note your decision to proceed with the license agreement and resale arrangement as planned out and are not surprised, as we did not believe that our staying out would affect your determination if you felt that it was best for yourselves and your customers. As you know, we have not been favorable to a *license agreement* at any stage of the proceedings but we gave the subject very serious consideration before coming to the definite decision not to become parties thereto, and our position has not changed since meeting you at Chicago May 13th. The resale arrangement may be of benefit to the jobber and we do not object to this plan in the least.

Your letter to Mr. Murphy will, no doubt, be answered by him.

Very truly yours,
J. M. KOHLER SONS CO.,
per—
Pres.

WJK/W

1 The Sanitary Enameled Ware Association.
1509 Arrott Building
Pittburgh, Pa.

W-2121005-1

Feb. 12th, 1910.

E. L. Wayman,
Commissioner.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

2 Dear Sir:—

I am pleased to acknowledge receipt of your letter of the 10th with reference to Re-sale Prices and License Arrangement.

I do not know how this matter is going to work out, but your letter leads me to believe that if something along these lines can be worked out that will be legitimate and worth while that I can count on your co-operation.

Yours very truly,
(Signed) E. L. WAYMAN.
Commissioner.

3

Feb. 14th, '10.

Resale Price and License Arrangement.

Answering yours of the 12th. As you know, from repeated conferences and some correspondence had with us, we are not very enthusiastic about the license arrangement and will not commit ourselves, at present, to the statement that we will join if it is formed. In our letter of the 14th we intimated that if a license arrangement was worked out and we
4 decided, at that time, to become parties to this agreement, or to co-operate as outsiders, that we would, in that event, be satisfied to sell our goods on the same basis as the Standard Sanitary Mfg. Company.

Yours very truly,
J. M. KOHLER SONS CO.,
per —

WJK/W. *Pres.*

The Western Union Telegraph Company. 1

Received at Sheboygan, Wis.

"foned"

3pm.30.ch.b5.z.13 paid x x
Pattsburg, Pa. Feb'y. 28th, 1910. P.M.
Walter J. Kohler, "Z"
care J. M. Kohler Sons Co.

Sheboygan, Wisconsin.

Meeting will be held Wednesday ten A.M. Chicago Athletic Club will you attend. 2

(Signed) E. L. WAYMAN.

Edwin L. Wayman
1509 Arrott Building
Pittsburgh

W-3161001-I

March 16th, 1910.

Walter J. Kohler, Pres., 3
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

I enclose copy of Memorandum of Agreement which has been signed by the following Companies that I have had the opportunity of seeing.

The McCrum-Howell Co.,
Blairsville Enameled Ware Co.
National Sanitary Mfg. Co.
The Barnes Mfg. Co.
Standard Sanitary Mfg. Co. 4
L. Wolff Mfg. Co.,
United States Sanitary Mfg. Co.
A. Weiskittel & Son Co.
The Humphryes Mfg. Co.
Union Sanitary Mfg. Co.

There is now a meeting of the Pipe Association going on in Pittsburgh which is very largely attended by most of the leading Jobbers and the majority of them are very much in

favor of the proposition. I hope you can see your way clear to join with the other Companies in this Arrangement.

Will you be kind enough to let me hear from you as soon as possible?

Yours very truly,
(Signed) E. L. WAYMAN.

Memorandum of Agreement.

We hereby agree to execute with E. L. Wayman of the City of Pittsburg, as Licensor, on or before April 15th, 1910, a License Agreement for the Manufacture of Sanitary Enameled Ware under the following United States Letters Patent.

"Various Patents covering Pneumatic Dredgers."
(to be enumerated in detail).

and such additional Patents as may come into his possession, upon the Terms, Conditions, etc. as hereinafter stated or provided for:

1. The License Agreement to cover the following Schedules of Enameled Ware.

Schedule 1. 5 year Guaranteed Baths.
" 2. 2 " " "
" 3. All other Grades of Baths.
" 4. Small Ware, Lavatories, etc. & R.R. Sinks.
" 5. Flat Rim Sinks.
" 6. Competitive Lavatories 552 to 562 inclusive 565 & 535.

2. The amount of Royalty to be as follows:

$5.00 per day per furnace in operation with a rebate of 90 per cent., beginning with the 1st, month of the 2nd. period and monthly thereafter, if the terms of the License have been complied with.

3. For each violation of the Price Regulations of the License Agreement we agree to forfeit a sum equal to the amount of the shipment in question, and such other penalties as may be agreed on.

4. The Selling Prices to the Jobbers to be established through the Licensor by a Price Committee appointed by the various manufacturers.

5. The Resale Prices to the Jobbers, taking into consideration the rebate for observance of Buying and Selling Regulations, shall be figured as follows: 1

High Grade Goods	25% above Jobbers' cost.
Competition Goods	16-2/3 above Jobbers cost.

6. The Rebates to Jobbers shall be as follows.

10% payable at end of Period for strict observance of agreements, the details of the manner in which the rebate shall be made, to be determined.

7. The length of the Rebate Periods shall be 3 months beginning April 15th, 1910, with the exception of the first period which shall end July 1st. 2

8. The License Agreement and Resale Prices shall become effective April 15th and the agreement to be executed between the Manufacturers and Jobbers shall contain a clause to the effect that all material purchased or on hand previous to the above date shall be sold at the Resale Prices that may be established.

9. The details of Contract Forms between the Manufacturers and the Licensor shall be drawn up by the Licensor and submitted for approval at the next Special Meeting to be held in New York City. 3

10. The Licensor will also submit the same covering Agreement between Manufacturers and Jobbers.

11. The following "Preferential Discounts" from the Selling Prices established by the Licensor will be allowed the various Manufacturers.

Schedule 1.—5 year Guaranteed Baths.
" 2.—2 " " "
" 3.—All other Grades of Baths. 4
" 4.—Small Ware Lavatories, etc. & R.R. Sinks.
" 5.—Sinks, Flat Rim.
" 6.—Competitive Lavatories 552 to 562 inclusive 565 & 535.

SCHEDULES.

Manufacturers	1	2	3	4	5	6
Standard	None	None	None	None	None	None
Wolff	"	"	"	"	"	"
U. S.	"	"	"	"	"	"
Kohler	"	"	"	"	"	"
Barnes	"	"	"	"	"	"
Cahill	"	"	"	"	"	"
Mott	"	"	"	"	"	"
Union	5%	2½%	"	2½%	"	"
Colwell	5%	2½%	"	2½%	"	"
Clymer	5%	2½%	"	2½%	"	"
Blairsville	5%	2½%	"	2½%	"	"
McVay & Walker	5%	2½%	"	2½%	"	"
Weiskittel	5%	2½%	"	2½%	"	"
National	5%	2½%	"	2½%	"	"
Iron City	5%	2½%	"	2½%	"	"
Humphreys	5%	2½%	"	2½%	"	"
Day-Ward	2½%	2½%	"	2½%	"	"
McCrum-Howell	5%	2½%	"	2½%	"	"
Wheeling	5%	2½%	"	2½%	"	"

12. The length of time for which the License Agreement will be entered into and such other details as may be necessary for the perfection of the arrangement to be determined at the next meeting of the various Manufacturers.

Signed:

JOBBER'S AGREEMENT.

A suggested form of contract to be executed between the Manufacturer and Jobbers, that I have prepared.

EL.W.

THIS AGREEMENT, Made this.....day of.....19 between the .....a corporation (hereinafter called the COMPANY) and .... of ..... State of ....., hereinafter called the ("Purchaser");

WITNESSETH: Whereas, the Company controls or is licensed under certain United States Letters Patent relating to Sanitary Enameled Ware and processes and apparatus used in the manufacture thereof, which said Letters Patent are enumerated as follows:

Pat. No.	*Date*	*Inventor*	*Title*	1

And Whereas, the Purchaser desires to purchase from the COMPANY, Sanitary Enameled Ware embodying or made in accordance with said inventions, and to obtain licenses to sell such Ware to others, and the Company is willing to sell Sanitary Enameled Ware to the Purchaser, and to License them for resale on the following terms and conditions:

Now, Therefore,

1. The Company agrees to sell and the Purchaser agrees to buy for a period of time ending June 30th, 1910, 2

(Insert Label)

Sanitary Enameled Ware at the following discounts from the Prices given in the various Schedules:

DISCOUNTS & TERMS.

Schedule	Articles	Discounts from Resale Prices Established by the Licensor. 3
1.	5 year Guaranteed Baths	10%
2.	2 " " "	10%
3.	All other Grades of Baths	5%
4.	Small Ware—Lavatories, etc. & R.R. Sinks	10%
5.	Flat Rim Sinks.	5%
6.	Competitive Lavatories.	5%

4

TERMS: Net 60 days or 2% for cash 10 days.

Deliveries.

(2) Goods will be sold to the Purchaser, F.O.B. Cars, where factory is located at the Prices given in the Resale Sheets for the various Zones (subject to the Discounts and Rebates named) with full freight allowed on shipments of 200 lbs. and over to the List of Cities named in the various Zones.

1 To other points than those named delivery can be made only on the basis of your being charged and paying freight from the nearest city named.

Goods shall be re-sold by the Purchaser at Prices established and prevailing in the various Zones into which the goods are shipped, regardless of the point of purchase.

Purchaser will be allowed C. L. Prices in any quantity on shipments to the Manufacturing Points specified. On shipments to Jobbing Points, other than Manufacturing points, C.L. or L.C.L. Prices will apply according to quantity, as established in the Price Sheets.

2

General Conditions.

(3) Prices or other Regulations are effective the morning of the date appearing on the sheet.

(4) The ware, covered by the Price Sheets shall be invoiced by individual items, and it is not permissible to bill collectively several articles in a "Lump Sum."

(5) The various conditions respecting "Guarantees" under which the ware is purchased by the Jobber, shall not be varied in the Resale to the Plumber.

3 (6) Enameled Ware purchased or on hand previous to April 15th shall be sold at the Prices and Regulations covering this Agreement.

(7) The restrictions herein contained, as to the prices at which Enameled Ware is to be purchased and sold, shall not apply to Enameled Ware sold and exported to Foreign Countries.

Rebates.

(8) If your purchases of material covered by the various Schedules from the following Licensed Manufacturers

4

Blairsville Enameled Ware Co.	Blairsville, Pa.
Barnes Mfg. Co., The	Mansfield, O.
Cahill Iron Works, The	Chattanooga, Tenn.
Clymer Mfg. Co.	Indiana, Pa.
Colwell Lead Co.	New York.
Day-Ward Co., The	Warren, Ohio.
Humphreys Mfg. Co., The	Mansfield, Ohio.
Iron City Sanitary Mfg. Co.	Pittsburgh, Pa.

Kohler Sons Co., J. M.	Sheboygan, Wis.	1
Mott Iron Works, The J. L.	New York City.	
McVay & Walker,	Braddock, Pa.	
McCrum-Howell Co.	New York City.	
National Sanitary Mfg. Co.	Salem, Ohio.	
Standard Sanitary Mfg. Co.	Pittsburgh, Pa.	
Union Sanitary Mfg. Co.	Noblesville, Ind.	
U. S. Sanitary Mfg. Co.	Pittsburgh, Pa.	
Wolff Mfg. Co., L.	Chicago, Ill.	
Weiskittel & Son, A.	Baltimore, Md.	
Wheeling Enameled Iron Co.	Wheeling, W. Va.	

have aggregated sums as follows and if all the conditions 2
of this Agreement have been complied with, we will pay you rebates set against them on such purchases as you have made from us, as follows.

$ ————————5%
————————7 ½%
————————10%
————————10 & 2½%

Rebates are payable only at the expiration of the Period ending June 30th, 1910 and after claims have been allowed by E. L. Wayman, Licensor, 1509 Arrott Bldg., Pittsburgh, 3
Pa.

Written application for Rebate must be made at the close of the Rebate Period to E. L. Wayman, Licensor, upon standard forms, which may be obtained from him for that purpose. Unless you present your claim for rebate within 30 days after the expiration of this agreement, we reserve the right to refuse to allow such Rebates.

Guarantee of Rebate.

(9) The Purchaser understands that the resale prices of all ware manufactured under the Letters Patent enumerated 4
herein, as established from time to time by the Company, must be maintained by all Licensed Sanitary Enameled Ware Manufacturers and by all Jobbers and Dealers. The Purchaser therefore, agrees that he will observe and strictly maintain on all types and classes of Ware the selling prices as they are set forth in the schedules, and will observe and strictly adhere to the rules and regulations as embodied in the price sheets and furnished as a part of this agreement,

or as they may be embodied in the price sheets issued hereafter and substituted by or under the authority of the Licensor (E. L. Wayman) in place of those furnished herewith. Articles may be added to or removed from the schedules at any time but in the event of such removal, the purchases to date of such removal will be considered as part of the amount on which rebate is estimated.

(10) The Purchaser also agrees during the life of this Contract, not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in Sanitary Enameled Ware of any manufacturer not licensed under the Letters Patent enumerated herein, except with the express written permission of the Licensor. Breach of any of the provisions of this agreement, or any failure to maintain and observe prices, rules or regulations shall give the Company the option immediately to cancel this contract and to withhold all rebates; and the Purchaser is hereby expressly put on notice that in case of any such failure, he can thereafter obtain Sanitary Enameled Ware manufactured under the Letters Patent above enumerated only at re-sale prices, without any discount or rebate whatever.

(11) This agreement does not become binding on the Company until accepted in writing at the foot hereof by the salesmanager or his duly authorized representative located in the main sales office of the Company.

.....

Accepted this ..... day of .....19 .

.....(Purchaser).

.....(Company)

By .....

Mar. 21, 1910. 1

E. L. Wayman.

We have your letter of March 16th with enclosed copy of tentative agreement entered into by certain manufacturers regarding license arrangement and re-sale prices. We have taken this question up with competent council, who advise that it is openly a price agreement and there is no question in his mind that it would be so considered, and is therefore in conflict with the laws of Wisconsin. Under the circumstances we do not feel that we are in a position to enter into this agreement, although if a satisfactory arrangement can be worked out whereby we co-operate with your association we would do so. 2

Very truly yours,
J. M. KOHLER SONS CO.,
per—

WJK-D

Pres.

THE SANITARY ENAMELED WARE ASSOCIATION
1509 Arrott Building
Pittsburgh, Pa.

3

March 23rd, 1910.

E. L. Wayman
Commissioner.

Walter J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wis.

Dear Sir:—

In reply to your letter of the 21st, I telegraphed you today as follows:

> "If you and your attorney will meet me New York next Monday, the day previous to meeting will satisfy you regarding legality. Wire answer so I can make appointment with my attorney." 4

I have just returned from New York City where I have had the entire matter up with E. E. Jackson, Chief Counsel

for the General Electric Company and who has handled for the past ten years their business in this direction in connection with other Companies.

I can hardly present the whole matter to you in a letter for various reasons and I would, therefore, like the opportunity of seeing you in New York, the day previous to the meeting, notice of which I sent you today.

With kind regards, and hoping you will be able to make an appointment with me for next Monday, I am,

Yours very truly,

(Signed) E. L. WAYMAN,

Commissioner.

Mar. 24, 1910.

E. L. Wayman.

Received your message of March 23rd, which we answered as follows—"Find our attorney out of city. I cannot arrange to be in New York Monday. Walter J. Kohler."

In explanation of the above, Mr. Kohler left the city today to be gone several days.

Yours very truly,

J. M. KOHLER SONS CO.,

per—

RJM/D

EDWIN L. WAYMAN.
Arrott Building,
Pittsburg

March 24th, 1910.

W. J. Kohler, Pres.,
J. M. Kohler Sons Co.,
Sheboygan, Wisc.

Dear Sir:—

I enclose for your consideration *Sample* Copy of the License Agreement to be executed between your Company and the writer, together with *Sample* Copy of a form of contract to be executed beginning each period between your Company and the Jobbers with whom you are doing business. I also enclose sample sheets of a Loose Leaf Price Book illustrating the Resale Price Arrangement.

The Discounts and Rebates named in the "Jobbers Agreement" would be allowed from the prices that will be established in the Resale sheets referred to. 1

You will note that it is intended to make all the operative resolutions part of the price regulations—these resolutions being listed on the sheets applying to the goods they are intended to cover.

Will you kindly study over these details, so that after a thorough discussion at the meeting, we can do business?

Yours very truly,

(Signed) E. L. WAYMAN.

Mar 26, 1910. 2

J. M. Kohler Sons & Co.,
Sheboygan, Wisc.

Ans'd .....

Order No. .....

3

4

some goods and 5% on others below any price we have ever named. This quotation was signed by Mr. Barth. We are advised that these prices were made general.

Yours very truly,

TA (signed) THEO. AHRENS, *Prest.*

[NOTE: The answer to this exhibit is Exhibit 149.]

PETITIONER'S EXHIBIT No. 155.

Filed Nov. 4, 1910.

[NOTE: This exhibit answers Exhibit 148.]

May 20th., 1910.

Mr. Theo. Ahrens, Pres.,
Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

Dear Sir:—

Acknowledging yours of the 18th., I have read with interest the copies of letters you enclose, and am returning them herewith. Inasmuch, however, as you do not sign the letter presume it was not read by you after inscription. We see no occasion for the final paragraph of your letter, stating that you wish to deny that you are a philanthropist, but you do say that the principal reason in endeavoring to consummate the re-sale price is because you want to put through some plan that would be to the interest of your customers, and that you are interested in the welfare of the people who sell your goods.

You did state also, personally, that if the deal did not go through it would cost your share-holders $300,000 this year, as you would be obliged to lower prices.

It therefore seems strange how you can reconcile both statements, and we will agree that you are not a philanthropist.

Our position is, briefly: We will protect, as always, the jobber, and the people to whom we sell, so long as it is to our mutual interest to do so.

We will not, however, resort to any method that our attorney advises is in defiance of the law.

We are not antagonistic to the re-sale plan and our customers, as well as yourselves, know this.

Yours very truly,

J. M. KOHLER SONS CO.,

Vice-president.

1 PETITIONER'S EXHIBIT No. 156.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.

General Offices.

Pittsburg, U. S. A.

In reply refer to No. A-71105-D

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
2 Theo. Ahrens, President.

Louisville, Ky. July 11, 1910.

John Sullwold, President.
Western Supply Co.,
St. Paul, Minn.

My dear John:—

I am very sorry that I did not have a chance to meet you again on the day following our strenuous experience in Chicago. I counted on seeing you without fail, but was kept very busy all day with the California delegation, and
3 could not locate you.

Mr. Wayman has not advised me whether he finally convinced you that it was to your interest to sign the contract with us and come in. I hope you have done so. We will certainly all feel it very keenly if you oppose us in this matter.

On the day that I left Chicago we had secured signatures from 333 jobbers out of a total of less than 370, giving us fully 90% of the jobbers and more than 90% of the purchasing power. It was reported to us that early last spring you went on record in a communication to Merkel Bros.,
4 stating that you were in favor of the re-sale plan, and would use your best efforts with the manufacturers to have them put out such a plan. I certainly hope that you will not desert us.

Awaiting your reply, which I trust will be favorable, I am

Very truly yours,
(signed) THEO. AHRENS, President

A.

I enclose tab on the evening's entertainment.

PETITIONER'S EXHIBIT No. 157.

Filed Nov. 4, 1910.

July 13, 1910.

Mr. Theo. Ahrens, Prest.,
Standard Sanitary Mfg. Co.,
Louisville, Ky.

Dear Sir:—

Replying to yours of the 11th. beg to say I am also sorry I did not see you again; but from the attitude taken by your company in our correspondence and from the way they treated our Company in not advising us in any way about what they proposed to do in this re-sale plan, not protecting us in any way as I understand they did their favored customers, and from conference had with Mr. Wayman I was very much in doubt whether you wanted to see me again about this matter.

Yes, I did write Mr. Merkel that I was in favor of a re-sale plan on enameled ware and I am now in favor of a legitimate re-sale plan on enameled ware. To my mind the present plan is not legitimate, but is purely a hold-up scheme to make Mr. Wayman thirty or forty thousand dollars per year and several millions for men who are already rich, and also putting on their feet a number of smaller enameled ware manufacturers who were anxious to get into the enameled ware business, but who could not stand alone and meet the competition of the larger and older manufacturers of this commodity, and also to put on their feet a lot of men in the jobbing business who wanted all the trade and make prices to crowd out their competitors and did not know enough to run a jobbing business, and by so doing they were putting themselves out of business.

Only a few years ago, when in conference with you, when the demand for your product was greater than the supply and all the jobbers were crying for enameled ware, I asked you why you did not advance the price on your product. Your answer was that the Standard Sanitary Mfg. Co., was a one hundred-cent-on-the-dollar concern, that you were getting fair returns on your investment on the cost of production at that time and, unless you were outvoted by your directors, there would be no advance, the

1 cost of production remaining the same. Had you and your company stuck to this policy and stood on your own bottom you would have had just as much money as you have today; but there would have been less manufacturers. Your company built up your competition by advancing prices.

The present re-sale scheme will build up the fellow who cannot produce enameled ware as cheaply as your company can and in a year or two there will be from ten to twenty more enameled ware manufacturers in the country. Your patents are only a subterfuge and are not essential in the manufacture of enameled ware. Any one can go into the
2 business. The re-sale plan will go to pot and the jobber will be worse off than ever. You may not care, as you have money enough and may want to get out from under before the trouble comes and you may feel—"To h— with the public", as the old saying is. Why not be fair in this matter and not make it harder for the future generation than you can help?

This fictitious value scheme has been tried out by the U. S. Steel Corporation, the American Radiator Co., the Trenton Potteries Co., the Central Foundry Co., and many others and failed.

3 While in Chicago I heard a Pacific Coast jobber say he did not care what the manufacturers did as long as he could make a good profit. This man failed in Minneapolis about eighteen years ago.

Now, why the advance in enameled ware at this time, when all other commodities are on a decline or hanging on by their eye lashes to maintain present prices, excepting possibly a slight advance to pay the expenses of a man, printing, postage, etc?

As to the treatment we received, I was in Chicago twice in May and tried to get a line on what was proposed, but
4 could get no information. I inquired if there would be an advance in price. Was told there would not. I was not consulted at all as to how we would like this deal. Now, I find that the Crane Co., were in conference several times during this period, they acquiesced in this scheme, adopted the re-sale plan and can sell any ware they wish to without any restriction, they, knowing what was going to happen, advised their trade, got in an covered. The United States Supply Co., a would be jobber of this city, who handle the U. S. Sanitary Mfg. Co.'s goods, I find also went around to

the trade prior to June 1st., and filled up everyone who would buy from them at old prices. I am also advised that other favored customers of yours were protected and were advised that an advance would take place so that they could cover. Your company took our good hard money for twenty years but you never advised us. Last Spring, after a conference with you and Mr. Torrance in Chicago I bought five hundred tubs from you and paid you forty cents a piece more for them than I could buy an equally class tub for, made by a reliable manufacturer. On this one order our Company paid you two hundred dollars more, to be loyal to you; but I presume because we bought a lot of Kohler ware every year that we were practically compelled to introduce into this market after offering the business to the Standard Sanitary Mfg. Co., who turned it down with the statement that they were not in a position to take on any more customers on small ware at that time and that they were already oversold, you did not count on us as one of your loyal customers. Why should the Crane Co., enjoy, just because they are large buyers, privileges that are not granted us? The first thing we knew about the whole plan was when we received from the different manufacturers a letter advising us to sign a re-sale plan and that unless we did we could get no more goods. I wrote Mr. Wayman for permission to sell Kohler ware as provided for in the agreement and was refused point blank. 1 2 3

Paragraph 10 in the re-sale agreement is coercion, non-American, unjust and we believe illegal, denying us our individual rights.

Since my conference with Mr. Wayman in Chicago he wrote, granting permission to sell Kohler ware *until further notice*. Which might be withdrawn within twenty-four hours after he had our signature. This proposition is an insult to anyone with ordinary intelligence and I told him so. 4

Now, I am not setting myself up as a socialist or a modern reformer, or a man with better judgment than the men who signed this agreement. Our Company has always and do now believe in making a reasonable profit on everything that we sell and are also willing that the manufacturers should have a reasonable profit. In fact, our policy has always been never to sell goods or let them leave our store unless there was a reasonable profit in the sale. We,

as you know, started small twenty years ago and if we had not done business along these lines we would not have the monument to show for our labors that we have today; but, using Theo. Roosevelt's favorite term "We want a square deal to all and are in favor of a square deal to all".

We are going to run our own business. We absolutely refuse to sign the re-sale plan as now outlined, come what may. We realize that this will cost us some money and annoyance. We have in the printers' hands at the present time six thousand dollars worth of plumbing specialty catalogues, illustrating a great many of the Standard Sanitary Mfg. Co's specialties. We are holding this up. We do not know what list to use and further, before we are coerced into signing away what we believe to be our rights, we will not illustrate the goods at all and cut them out entirely. We realize and appreciate fully that the Standard Sanitary Mfg. Co. can get along very nicely without us, but we are also egotistical enough to believe that we can also remain in business without them.

As already advised Mr. Wayman, we will now use all honorable methods to break up this, as we believe, illegal combination.

I regret very much indeed that there is this difference in our opinion. I want to thank you personally and also the other members of your company and your employes, whom I have known for many years, for the courtesies that I have received at their hands. There is nothing that has come up in our business in years that I have given so much careful consideration. Have not acted in haste. I have conferred very seriously with my partner, Mr. Bettingen and am acting in absolute good faith, taking the stand which I believe to be right and just.

Yours very truly,

WESTERN SUPPLY CO.,

Dict. J.L.S. Per J. L. SULLWOLD.

PETITIONER'S EXHIBIT No. 158.

Filed Nov. 4, 1910.

THE NORTH AMERICAN TELEGRAPH COMPANY.
Telegram.

July 5, 1910 Paid.

E. L. Wayman,
c/o La Salle Hotel,
Chicago, Ill.

Will meet you La Salle hotel three oclock tomorrow afternoon.

J. L. SULLWOLD.

1 PETITIONER'S EXHIBIT No. 159.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.
General Offices.
Pittsburg, U. S. A.

In reply refer to No. A-71801-D

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Theo. Ahrens, President.

2 Louisville, Ky. July 18, 1910.

Mr. John L. Sullwold,
c/o The Western Supply Co.,
St. Paul, Minn.

My dear Sullwold:—

Your letter of July 13th. reads as if the argument made by Mr. Fowle before the Stratford Hotel bar and other bars in Chicago, really produced an impression on you. Let me say to you that it is unfair in the extreme, and what is
3 worse, you make statements that you cannot substantiate, but I want to answer it, not because I believe I can influence your opinion, but because I cannot allow such misstatements as you make to go unchallenged. Personally, so far as I am concerned, I do not care whether you sign up or not. This is personal.

Your first argument that we are injuring ourselves, and building up our competitors, is advice that we do not need. Like you, we claim the right to run our own business, and to decide what is good for us.

Your second point that the re-sale plan is not a good
4 thing for the legitimate jobber, is answered by the fact that within thirty days after the jobber's contracts were sent out 90% of the legitimate jobbers of the United States had signed and returned them.

You say our patents are only a subterfuge. How do you know that? What right have you to call these patents a subterfuge? You do not know what you are talking about when you say this. Neither does your informant, even if it is Walter Kohler, or J. B. Murphy.

You say this fictitious value scheme has been tried out

by the United States Steel Corporation, American Radiator Co., The Trenton Potteries Co., the Central Foundry Co., and many others ,and that it failed. I am not aware that any of these corporations ever tried out such a plan as we are now working under; in fact, I am sure they have not done so. 1

"You ask why an advance should be made at this time. In reply we can say that our prices under the re-sale plan are no higher than they were before June 1st., with the exception of the Missouri River territory, where we have heretofore paid excessive freight allowance, and where we have now equalized so that our product will give us the same return in that territory as in the rest of the United States. Our prices in New York City, Philadelphia, Boston, Chicago, Pittsburg, Cleveland, Louisville, and in fact through the entire East and Central section of the country are as low as they were before the re-sale plan went into effect. It happens that in your particular territory they are slightly higher. 2

Your complaints that the Standard Sanitary Mfg. Co. has not given you proper treatment; that you were not given opportunity to cover yourself before June 1st., and that you were not consulted with regard to the re-sale plan, are all unfounded. 3

I have just talked to Mr. Verity on the long distance; called him up especially to find out whether he had offered to take care of you before June 1st. He advised me that he called on you about May 20th., and that you told him you were not in need of anything, as you had a good stock on hand and did not want to buy any more. We have at all times been willing and anxious to serve you to the best of our ability and to give you the best we had in the shop, both as to service and price.

I believe we have done so. It is true that we conferred with the Crane Co., on this plan. It is also true that we did not take it up with you direct. Our reason for not taking it up with you direct is because we were advised that you were heartily in favor of the re-sale plan, and so expressed yourself both in writing and verbally. It was necessary for us to take it up with the Crane Co., on account of their prominence, and the fact that they are the largest distributors of Enameled Iron Ware in the United States. It was not possible for us to take it up with all 4

our good friends, as much as we would have liked to do so, as it was a physical impossibility to do this.

I understand that you are sending out a copy of Kohler's letter to the trade, and are advising your customers that paragraph 10 of the re-sale agreement is a coercion, Un-American, unjust, and you believe is illegal, as it denies you your individual rights.

Let me ask you why we should not have the same rights to refuse to sell our goods to someone as Kohler has, and as he is now doing? Right next door to you in Minneapolis, the Crane Branch has the exclusive sale of Kohler goods, and Kohler has repeatedly turned down orders for his enameled ware sent in by the Central Supply Co. Try it yourself and see whether he will fill the orders for you, yet you blame us for now doing the very thing your friend Kohler has been doing for several years.

Now I am very sorry indeed to receive this letter from you. Personally, I do not care whether you sign or not. I know that you can get along without us just as well as we can get along without you, but I do not like the idea of an old friend and customer like you telling me that we are a lot of high-binders and pirates. That sort of talk might do all right when we are doing Chicago, and ordering up just one more about every five minutes, but it is not fair to us when you really sit down in your office and in sober earnest write us such a letter. The Standard Sanitary Mfg. Co. has always, and is now doing a clean, honest and legitimate business, and we take no back seat as against your concern, or any other.

I want to add that I hope this difference of opinion between us on a business matter will not cause any break in our personal relation. I am coming up to see you this summer, and I will promise not to talk re-sale agreements, or to ask for any of your business. You can run your business just as you please, and we will do the same, but I hope before another 12 months rolls around that we can convince you by the actual facts of the case that the position you have taken is all wrong.

Yours very truly,

THEO. AHRENS,
President.

A.

P. S. In dictating this letter, I forgot to say that re-sale

prices are not an unusual thing. No doubt you are maintaining them on some items that you sell. Wrought pipe, for instance, Penberthy injectors. In other lines of business they are quite common and cover many of the things that you eat, drink, wear and use, such as, for instance, Ivory Soap, Winchester Cartridges, Breakfast Food, etc., etc.

PETITIONER'S EXHIBIT No. 160.

Filed Nov. 4, 1910.

June 13, 1910.

Mr. Francis J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburgh, Pa.

Dear Sir:—

The re-sale price as outlined does not look very good to me. We have, as you know, been handling the Kohler
2 Small ware, have same illustrated in our catalogue and have quite a large stock of them on hand. I have written Mr. Wayman for permission to continue to handle this ware. This he has refused. The Kohler people do not seem inclined to go into this arrangement.

While we expressed ourselves several months ago, when approached on the re-sale proposition, as being in favor of a re-sale plan, we find that the plan now proposed is working an injury on us, as under the proposed arrangement we will make a smaller profit on enameled ware, outside of the two year guarantee tubs, on which the profit would
3 remain about the same. By this plan the manufacturers propose to increase their profits materially at the expense of the jobber who has had business ability enough to get a fair profit on the goods he sold. As the writer sees it, this emanates from the eastern jobber who did not know enough to get a reasonable return on merchandise sold; but knifed each other to the extent that they found they were not making any money. Now they want to pull in all the jobbers in the United States in this arrangement, which is unfair to us.

I am not adverse at any time that a manufacturer should increase his profits to get fair returns on money
4 invested providing he does not do it at our expense.

I am not at all sure that the resale price on enameled ware and quite a number of other commodities is a permanent good thing for either the manufacturer or the jobber. It seems to me it only lets down the bars for both manufacturer and jobber to invite competition, which has been very difficult to exterminate when once established. This has been demonstrated by some of the largest concerns in the country, who have built up competition by holding their prices on their products above normal and

afterwards, when they found the damages they had done, they dropped their prices materially. A year ago last February the National Tube Co. lowered their price ten dollars per ton on pipe. A year ago last January the American Radiator Co. lowered their price on house heating boilers 20% and on radiators 10%. Several years ago the earthenware manufacturers did the same thing. The enameled ware manufacturers also did this same thing, with the result that they were all holding the umbrella so that others could get into the game and I am of the opinion that if a resale price were to be established on a majority of the commodities we sell that we would have one hundred and fifty new jobbers in the United States in the next twelve months besides numerous new manufacturers. 1 2

The hardware jobbers today are endeavoring to sell everything from a ten penny nail to a gold watch. They are very anxious to get into the plumbing supply business, particularly in the west. The Marshall-Wells Hardware Co. of Duluth have declared to one of our friends within a week that they now have practically a complete line of plumbing supplies and that they propose to go into this business so that they can supply the hardware men throughout the country, whom they sell, with plumbing goods. This would mean that every general store in the small towns that carries a small line of hardware, as they usually do, would be able to purchase plumbing goods, to be put in by a blacksmith or a tin smith. This will work an injury to every jobber and every legitimate retailor in plumbing supplies. The prices are fixed so that it will encourage new manufacturers in plumbing supplies. There will undoubtedly be an overproduction; these manufacturers will want to dispose of their products and the hardware jobber will have no trouble in getting into this business. Up to date the hardware jobber has been fairly controlled and it seems to me that it would simply force the legitimate jobber of plumbing supplies today, who have the capital to carry out the plan, to market his product on the Sears-Roebuck plan —to sell to any one who has the price. If this was carried out it would upset the whole jobbing business as well as to decrease the earning power of the largest manufacturers now in business and it would mean a total demoralization of the whole plumbing supply proposition I am therefore not in favor of a re-sale plan on enameled ware as outlined. 3 4

1 I do not like to be arbitrary or be contrary to bettering the conditions; but I do not think it is justice that our Company should be called on to pay the expense of the jobber or jobbing community who do not know how to carry on a legitimate jobbing business.

Would be pleased to have a line from you.

Yours very truly,

WESTERN SUPPLY CO.,

dict J.L.S. Per J. L. SULLWOLD.

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PETITIONER'S EXHIBIT No. 161.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. T-61615-U

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
1st Vice President.
Sales Department.

Pittsburg, U. S. A. June 16, 1910.

Mr. J. L. Sullwold,
Western Supply Co.,
St. Paul, Minn.

Mr. dear John,

I was greatly disappointed at not seeing you at Toledo yesterday. I went there more to see you than any other one person and as I say, was greatly disappointed.

I explained as well as I could the conditions to Mr. Frye. I want to say to you, Friend Sullwold, that we went into this proposition at the request, if not the behest of the jobbers, and if it is not to their liking, it will be a great disappointment to me. I am sorry I ever heard of the scheme because it does not seem to be appreciated by all of the jobbers and it should be. My argument is simply this:

The re-sale agreement is the only legal remedy that can or may be applied to better conditions as they exist in the larger majority of jobbing centers. The opinions expressed in the meetings yesterday are just those as previously expressed to us individually and collectively. Where the conditions are bad, and that's pretty generally, they want the re-sale proposition but it seems they want the other fellow to have it and the particular party in question wants to be allowed to do as he pleased. This, of course, we can't do. If the re-sale scheme for iron pipe is a good one and has made, as generally expressed, a profit for the jobber, then why is not a similar scheme for enameled iron, particularly so when it is along such lines (and we believe it so to be) as will not

meet with opposition on the part of the Courts. The whole thing seems to be a mystery as well as a disappointment.

Here is a proposition which assures the jobber of a profit and assures him a steady and continuous market so far as profit is concerned, permits him to know almost to a certainty what his neighbor's goods are costing him and therefore what his competition is based upon, the profit being the same for each, excepting in the case of the smaller jobber who does not buy a sufficient quantity to obtain a preferential or quantity discount, and which extra discount we believe the larger buyer is entitled to, although on this score, men like doctors, differ.

I have worked for eight weeks very strenuously on this matter, not only at the risk of my personal comfort but even of my health because it has taken my time from my own regular line of work, compelling me to do this regular work afterwards and make up for it and find now that it is spent on a cause that is, to a degree, distasteful and obnoxious to the very people who will be benefited by it and to find any opposition is rather a surprise to us.

I have only to say that we have over one hundred sixty (160) jobbers who have registered with us. I do not know how many have registered with the other manufacturers, parties to the agreements. The names cover from the Atlantic to the Pacific; with the exception of one customer in New England, all the trade there have signed up. This one has a particular reason but I think will come in.

Yours very truly,

(Signed) FRANCIS J. TORRANCE.

FJT

PETITIONER'S EXHIBIT No. 162.

Filed Nov. 4, 1910.

June 21, 1910.

Mr. Francis J. Torrance,
Standard Sanitary Mfg. Co.,
Pittsburgh, Pa.

My dear Torrance:—

I have yours of the 16th and note contents carefully. I assume that you did not receive my letter of the 13th, in which I tried to explain fully my feeling in the matter.

I have been in the plumbing supply business ever since I was sixteen years old, I have been at the head of this Company for twenty years, I have been fairly successful and I trust without getting what is commonly called—the swelled head. I attribute the success of this Company to two things —Our policy from the very start was never to let any goods go out from our store unless we received a reasonable profit in return regardless of what our competitors were doing and, as you know, our big competitors in this market did not give us the glad hand or welcome to our city. The other was—good, honest hard work. I can therefore state from actual experience that any one going into any line of business that applies these two principles to his business cannot help but be successful.

The present re-sale plan on enameled ware would cost our Company quite a little sum of money annually, besides throwing down the bars to invite competition both for the manufacturer and ourselves.

You refer to the re-sale scheme on iron pipe. This scheme is on an entirely different basis. A year ago last February the National Tube Co., after holding their prices above normal for a number of years, woke up suddenly and found they had built up some good stiff competition that was cutting into their tonnage. They immediately took steps in their own organization, without consulting any one, to cut the price ten dollars per ton. This cut cost the jobbers that had a stock of pipe on hand, I would estimate two hundred thousand dollars. In order to re-emburse the jobber in a measure for this they promulgated a re-sale plan and intimated to the independent mills that if the price to the jobber on the re-sale plan would not be maintained that they (the

1 National Tube Co.) would cut the price again. They did not go to the jobber however and tell him that he must confine his sales to certain manufacturers as has been done in the enameled ware scheme.

Now friend Torrance, just a word as to our relations with you. Ever since we have been in business, 95% of the bath tubs we have handled have been of your make and quite a little small ware. We have a copy of a letter on file here which I wrote you several years ago, in which I told you frankly that it was my desire to purchase all our enameled ware from your company and asked you what you could do
2 for us. You replied that we had your regular discount sheet and the prices therein were the best you had. You stated further that as to small enameled ware you were already oversold and that you thought it best to advise us frankly as to your conditions and that you could not take us on at that time on our small enameled ware requirements. There was nothing left for us to do except to make arrangements for small enameled ware with another company and we decided on the Kohler goods. That ware up to that time we had handled only in a small way. This concern were progressive, they made good ware, made lots of it and they
3 supplied us with our requirements with the result that we established a large trade on Kohler small enameled ware throughout the northwest, which we still enjoy, and we have same illustrated in our catalogues and you know they cost money. Now Mr. Wayman tells us that we must cease buying Kohler ware, destroy our catalogues or the licensed manufacturers will not sell us. One of the licensed manufacturers has already refused to ship us goods until we sign the agreement.

Another feature that I cannot understand is how the Crane Co. can sell Kohler ware in their Minneapolis store,
4 Standard Sanitary Mfg. Co.'s ware in their St. Paul store, and both in their Aberdeen, Fargo and Duluth branches. Some of these things have got to be made clear to me before I can be railroaded into a scheme, which, as I see it now, is going to cost The Western Supply Co. several thousand dollars a year in loss of profits, and increase the manufacturers' profit materially for the time being only, as I feel confident that with the prices asked for by the manufacturers at this time, when there is no advance on any other commodity in this line, it will only build up competition for the manufacturer

as well as for the jobber, as there is no combination on earth 1
that can beat the man that will work hard and market his goods at a profit. It is impossible for the largest manufacturer in the country to compete with him or put him out of business except at a great loss to themselves.

Again, we find that the United States Supply Co. of this city, who should not be recognized as jobbers at all, but as brokers, are handling the United States Sanitary Mfg. Co.'s line and their salesman informed one of our men today that they had no instructions as to maintaining a re-sale price.

I regret very much that I was not able to attend the C.S.A. meeting at Toledo, as we had our annual stockholders 2
meeting on the 14th of this month. We had matters of importance coming up at this meeting and it was impossible for me to get away. Again, it works quite a hardship on us to attend a meeting east of Chicago as it practically requires a week to attend these meetings.

I am sorry that our opinions differ in regard to the re-sale plan as now outlined and I have decided not to sign this re-sale plan and, as I understand it, you will not ship us any more goods until this agreement is signed. Our Company will therefore fight this out to the best of our ability.

3

Beg to assure you there is no personal feeling in this matter at all. It is simply a clear case of where I feel that our pocket-book is being legislated against by the people who are living in your territory where the conditions are entirely different from what they are here and I do not see why we should be called upon to pay for their folly. On the whole I feel that this scheme was railroaded through altogether too much of a hurry and the jobbers who have ruined their own business through their own folly were ready to take anything and urged the manufacturers strongly to adopt this scheme.

4

Yours very truly,

WESTERN SUPPLY CO.,

dict. J.L.S. Per J. L. SULLWOLD.

1 PETITIONER'S EXHIBIT No. 163.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. T-62300-U

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
2 1st Vice President.
Sales Department.

Pittsburg, U. S. A. June 23, 1910.

Mr. John L. Sullwold, Prest.,
Western Supply Co.,
St. Paul, Minn.

My dear John:—

I am obliged by your letter of the 21st. but am not sure that the contents are equally good for both of us. I think
3 you would be better to go along with us in this matter because the paramount object in it is for the benefit of the jobber, not the manufacturer. The only real gain that the manufacturer has to hope for is the increased sale and use of enameled iron instead of some other materials.

Your experience, owing to territorial conditions, may be different from that of other jobbers and it certainly is, taking your statements at their face and we have no desire or reason to take them otherwise. All over the country we have been hearing that enameled ware was profitless to the jobber and that there was more money in solid porcelain, vitreous
4 china and other goods which might be readily substituted both to the satisfaction of the consumer and the advantage of the jobber. We went into the scheme for that reason alone, i. e. to make our goods profitable to those who handle them. We have no ulterior motive whatever.

As to the legality of the scheme, we have no doubt, else we would not have gone into it. We may be mistaken in this and time alone will prove it.

As to Kohler's attitude in the matter, this is simply his own stubborn ideas in the matter. He is standing out

against the wishes of, to the best of my knowledge, at least 75% of his customers and as they put it, preventing their making a proper and reasonable profit on their goods. 1

In the matter you speak of as to our small ware, would say it is many years since we were able to take care of you on small ware and the recent reasons given by you for purchasing small ware from Kohler were simply that you could get from Sheboygan mixed cars which you could not get from here. How correct this is, I am not just sure of at the present time but I can't just understand how, under the Inter-State Commerce, you could get anything different from Sheboygan than you could get from Pittsburg or New Brighton. If it is a good thing for one Concern, it ought to be for all. I can't see it in any other light unless it would be the selfish position which some manufacturer might temporarily occupy to the disadvantage of his competitor or neighbor. 2

Let me ask you, do you not handle any goods on a re-sale agreement. I understand you do but I may be misinformed. Let me also ask you if the resale pipe business has not been a profitable one. While you make some criticism about the method of its establishment and we have no objection to your arguments whatever, you do not say that it has not been profitable and I assume, as you do not say to the contrary, you are a party to it and are working under it. 3

The reference you make on the second page of your letter in which you advert to our (at least, I so take it) going to the jobber and telling him what he must do, you must bear in mind that all this is predicated on certain patents, the validity of which have been established by the United States Courts in New York, Chicago and Pittsburg. There has been no desire on the part of those promoting this scheme to shut out anybody, either manufacturer or jobber; in fact, all manufacturers were invited, urged and coaxed to come in. In fact, there has been no attempt whatever to shut anyone out. The policy has been positively and energetically to the contrary. 4

I hope you will think the matter over and come along because we would like to continue our very pleasant relations with you.

Yours very truly,

F.J.T. (Signed) FRANCIS J. TORRANCE.

PETITIONER'S EXHIBIT No. 164.

Filed Nov. 4, 1910.

June 27, 1910.

Mr. Francis J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

My dear Torrance:

Note yours of the 23rd. and I am satisfied beyond a doubt that your ideas and mine do not agree. I am going to answer a few of your questions and remarks.

You state that the reasons given by us for purchasing small ware from Kohler were simply that we could get from Sheboygan mixed cars which we could not get from you. You are surely in error about this as we could not make this statement and make it truthfully, as Kohler cannot ship combination cars of small ware from Sheboygan to St. Paul or any other western point. This is a privilege however that the Interstate Commerce Commission has allowed you to enjoy. We have been able to purchase of you and could to-day, if you were willing to sell us, mixed carloads of enameled ware shipped to St. Paul and shipped west from here; or in other words, we could ship direct to our customers mixed carloads of enameled ware from any of your plants. Where you get this idea we are at a loss to understand.

You ask "Do you handle any goods on a re-sale agreement?" Replying to same I will say "No sir". We are however today selling two commodities on a re-sale price established by the manufacturers. One is wrought pipe; the other is Penberthy injectors. These people do not say to us however "If you want to enjoy this re-sale price we want to advance our selling price to you, you must confine your purchases to certain manufacturers or we will not sell you, and you must be satisfied with a smaller profit than you are now getting, because certain jobbers in the east are not enjoying the profits that you are making and they are satisfied with our plan; why should not you be?" I have paid my respects to the business methods of some of the eastern jobbers in my former letter and I do not see why we should be called upon to pay good hard earned money for the follies of others.

I want to say right here that I am in favor of a re-sale

plan that is legal, a re-sale plan that is just and fair to every one, that will net a reasonable return to the manufacturer and a reasonable return to the jobber. Every laborer is entitled to his hire, every capitalist is entitled to a legitimate fair return on his capital, every manufacturer is entitled to a fair return on the goods he produces and in addition to this he is entitled to a reasonable return for the hazards there are in his business. I am absolutely opposed to any combination of manufacturers, jobbers or any one else to bleed the public. I never have been a party to any combination of this kind and never will be, even though it be legalized. By this I mean that neither manufacturer or jobber has any right to exhorbitant profits. It never has and never will end well. I am not in favor of the re-sale plan adopted by the enameled ware manufacturers as you now have it and will not become a party to same. 1 2

Reading between the lines in your letter I now understand that you do not want any of our orders unless we sign your license agreement. Kindly advise us if this is true so that we may not lose our own time and take up yours by sending you these orders only to be returned and so that we may advise our customers that our Company is not in a position to furnish licensed enameled ware. 3

Yours very truly,

WESTERN SUPPLY CO.,

Dict. J.L.S. Per J. L. SULLWOLD.

4

PETITIONER'S EXHIBIT No. 165.

Filed Nov. 4, 1910.

June 10, 1910.

Mr. W. A. Myler,
c/o Standard Sanitary Mfg. Co.,
Pitttsburg, Pa.

Dear Sir:—

I have your recent letter withdrawing perferential discounts. We also have re-sale proposition submitted to us.

As far as our Company is concerned I can see where the re-sale plan submitted is increasing your income materially, as, if I understand the plan correctly, it increases the cost to us materially. The proposed re-sale price is considerably less than we are now getting. In other words, the profit on the re-sale plan to us is less. We have always been able in this market to maintain a selling price that netted us a fair return on our investment and, as I see the situation now, it seems that just because a lot of the eastern jobbers were not able to maintain a respectable selling price on their product they have appealed to the manufacturers to help them out by adopting a re-sale plan at our expense. On everything excepting the two year guarantee tubs we are getting a better price than the re-sale plan will give us and on the tubs in question we have been getting at least as much profit, if not a little more; so you can naturally see that this plan does not appeal to me at all for the simple reason, while I am not adverse to increasing your percentage of profit, that it is cutting down our profit on enameled ware materially, which, if adopted, will cost us a good deal of money at the end of the year.

Yours very truly,
WESTERN SUPPLY CO.,
Per J. L. SULLWOLD

Dict. J.L.S.

PETITIONER'S EXHIBIT No. 166.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No.

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
1st Vice President.
Sales Department.

Pittsburg, U. S. A.
June 4th, 1910.

Western Supply Co.,
St. Paul, Minn.

Gentlemen:

Enclosed find copies in duplicate of Contracts covering the purchase of Licensed "Standard" Sanitary Enameled Iron Ware for the period beginning June 6th and ending Dec. 31st, 1910.

Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you Licensed Sanitary Enameled Ware.

Yours truly,
STANDARD SANITARY MFG. CO.
F. J. TORRANCE
1st Vice-Prest.

Received
June 6—1910.
THE WESTERN SUPPLY CO.

PETITIONER'S EXHIBIT No. 167.

Filed Nov. 4, 1910.

WHEELING ENAMELED IRON CO.
Manufacturers
of
Sanitary "Porceliron."

Elm Grove, W. Va., June 6/10.

Gentlemen:

Enclosed find copies in duplicate of Contracts covering the purchase of Liscensed Wheeling Sanitary Enameled Iron Ware for the period beginning June 1st and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you Liscensed Sanitary Enameled Ware.

We are prepared to offer you a further discount of 5% on the Five-year Guaranteed Bath Tubs and 2½% on the Two-year Guaranteed Bath Tubs purchased from us during the life of this Contract.

These additional discounts will be deducted from the face of the Invoice. Thanking you for your courtesy and prompt attention, and soliciting a share of your valued patronage, we are

Yours respectfully,
WHEELING ENAMELED-IRON CO.

GWF/MR

Received June 13, 1910
The Western Supply Co.

PETITIONER'S EXHIBIT No. 168. 1

Filed Nov. 4, 1910.

THE McCRUM-HOWELL CO.
Branches and Agents All Cities
General offices
Park Ave. & 41st Street
New York

Boiler Plant
Norwich, Conn.
Radiator Plant
Uniontown, Pa.
Enameled Ware Plant
Uniontown, Pa.

Electric Plant
Racine, Wis. 2
Vacuum Cleaner Plant,
Chicago, Ill.

May 31, 1910.

The Western Supply Co.,
5th & Sibley Sts.,
St. Paul, Minn.

Gentlemen:—

Enclosed find copies in duplicate of Contracts covering the purchase of Licensed RICHMOND Sanitary Enameled Iron Ware for the period beginning June 6th and ending December 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these contracts before we can sell you Licensed Sanitary Enameled Ware. 3

Yours very truly,

HTG-EMT.

HOWARD T. GATES,
Secretary.

Received
June 8—1910
THE WESTERN SUPPLY CO. 4

PETITIONER'S EXHIBIT No. 169.

Filed Nov. 4, 1910.

L. C. Huesmann, President.
I. G. Smith, 1st Vice-President.
C. E. Gates, 2nd Vice-President & Mgr.
E. V. Brigham, Sec'y. & Treas.

UNION SANITARY MFG. CO.
Successors to the McElwaine-Richards Company.
Manufacturers of
Cast Iron Enameled Bath Tubs, Lavatories and Sinks,
Soil Pipe and Soil Pipe Fittings.
Noblesville, Indiana.

Design
Durability
Unexcelled.

Quotations and Contracts subject to possible delay from strikes, accidents or other causes beyond reasonable control of the seller.

June 1st, 10.

Western Supply Co.,
St. Paul, Minn.

Gentlemen:—

Enclosed find copies in duplicate of Contracts covering the purchase of Licensed Union Sanitary Mfg. Co.'s Sanitary Enameled Iron Ware for the period beginning June 1st and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you Licensed Sanitary Enameled Ware.

Yours truly,
UNION SANITARY MFG. CO.

EVB.

PETITIONER'S EXHIBIT No. 170.

Filed Nov. 4, 1910.

F. H. Caldwell, President
J. J. Mahoney, General Manager.
Our Works 1890.
Our Works 1905.
Our Works to-day.

Established 1875.

THE CAHILL IRON WORKS.
Manufacturers of
Plumbers' Porcelain Enameled Cast Iron Ware
"Southern Beauty"

Lavatories, One Piece Roll Rim and Apron Sinks etc.
Factory, Corner Boyce & 13th Sts.

Main Office and Salesrooms, Corner Boyce & 14th Sts.,
Cable address "Cahill" Chattanooga.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.
June 1, 1910.

Received Jun. 6—1910.
The Western Supply Co.

Enclosed find copies in duplicate of Contracts covering the purchase of Licensed "Southern Beauty" Sanitary Enameled Iron Ware for the period beginning June 1st and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these contracts before we can sell you Licensed Sanitary Enameled ware.

Yours truly,
THE CAHILL IRON WORKS.

PETITIONER'S EXHIBIT No. 171.

Filed Nov. 4, 1910.

L. Wolf, President,
John Clifford, Sec'y & Gen'l Mgr.
H. M. Hoelscher, Ass't. Sec'y.
John F. Wolf, Vice-President
Christian J. Wolf, 2nd. V. Pres.

L. WOLF MANUFACTURING CO.
Plumbing
Goods.

Chicago, Ill. June-13-1910.

WU-H
Western Supply Co.,
St. Paul, Minn.

Dear Sirs:—

Enclosed find copies in duplicate of contracts covering the purchase of Licensed L. Wolff Mfg. Company's Sanitary Enameled Iron Ware for the period beginning June 1st, and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you any Licensed Sanitary Enameled Ware.

Yours truly,
L. WOLFF MFG. COMPANY.
W. S. VITLEY.

Received
June 14, 1910
THE WESTERN SUPPLY CO.

PETITIONER'S EXHIBIT No. 172.

1

Filed Nov. 4, 1910.

Established 1862

Telephone P. & A. 312
Bell 170 Braddock

McVAY & WALKER
Iron Founders
Manufacturers of
Porcelain Enameled Bath Tubs
Soil Pipe and Fittings
Sinks, Hoppers, etc.
Corner Halket Avenue and Ninth Street

2

Braddock, Pa., U. S. A. June 4, 1910.

Gentlemen:—

We hereby withdraw all previous quotations, either verbal or written.

Enclosed find copies in duplicate of contracts covering the purchase of licensed McVay & Walker Sanitary Enameled Iron Ware for the period beginning June 1st and ending December 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these contracts before we can sell you Licensed Sanitary Enameled Ware.

3

McVAY & WALKER COMPANY.

PETITIONER'S EXHIBIT No. 173.

Filed Nov. 4, 1910.

4

THE WESTERN UNION TELEGRAPH COMPANY.

50 Z XA, 18,
Nx, Pittsburg, Pa., 22-10.,
J. L. Sullwold,
Care Western Supply Co.,

Please wire at once at my expense if you have executed or intend to execute jobbers license *agreement*.

E.L. WAYMAN. 334 P.M.

PETITIONER'S EXHIBIT No. 174.

Filed Nov. 4, 1910.

NORTH AMERICAN TELEGRAPH COMPANY.
TELEGRAM.

June 22, 1910.

E. L. Wayman,
Arrott Bldg., Pittsburgh, Pa.

No Sir and do not intend to

J. L. SULLWOLD.

PETITIONER'S EXHIBIT No. 175,

F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.
Manufacturers of
Plumbers' Porcelain Enameled Cast Iron Ware
"Southern Beauty"
Lavatories, One Piece Roll Rim and Apron Sinks etc.
Factory, Corner Boyce & 13th Sts.
Main Office and Salesrooms, Corner Boyce & 14th Sts.,
Cable address "Cahill" Chattanooga.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.
June 8, 1910.

Western Supply Co.,
St. Paul, Minn.

Gentlemen:—

We are in receipt of your valued order of the 6th, No. 2863, and beg to thank you for same. You were advised some time ago by E. L. Wayman, Licensor, that new prices would be effective June 6th, and, as your order did not reach us until June 8th, we have no choice whatever in the matter, but will be compelled to invoice same at new prices. These prices have doubtless reached you by this time, and we trust that the above will be satisfactory.

In order to get the benefit of discounts from the resale prices, it will be necessary for you to return the contract which we mailed you on the 4th inst., properly signed, and, if you have not already forwarded same, we would ask that you return it with your reply.

Again thanking you for the order, and awaiting your reply, we are,

Yours truly,
THE CAHILL IRON WORKS,
By H. W. POWELL.

HWP/W

PETITIONER'S EXHIBIT No. 176.

Filed Nov. 4, 1910.

June 10, 1910.

The Cahill Iron Works,
Chattanooga, Tenn.

Gentlemen:—

Yours of the 8th at hand and noted. Replying to same will say we have not signed contract owing to the fact that we handle the J. M. Kohler Sons Co's goods very largely. We have asked Mr. Wayman for permission to sell these goods before signing same, which permission will undoubtedly be granted. He has not as yet had time to answer our letter. There is no doubt in our mind but what this permission will be granted.

As we are in a hurry for the material in question we trust you will make immediate shipment.

Please bear in mind that we were not consulted at all as to whether the re-sale plan would be agreeable to us or not and w do not propose to sign the re-sale plans unless that they work out to our interests as well as to the manufacturers interests and this cannot be decided upon in a few minutes.

If for any reason after the above explanation you cannot fill this order please wire us at our expense.

Yours very truly,
WESTERN SUPPLY CO.,
per J. L. SULLWOLD.

dict. J.L.S.

PETITIONER'S EXHIBIT No. 177. 1

Filed Nov. 4, 1910.

F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.

Cable address "Cahill" Chattanooga.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A. 2
June 14, 1910.

The Western Supply Co.,
St. Paul, Minn.

Gentlemen:—

Replying to your Mr. Sullwold's favor of the 10th would state that according to instructions we have from the Licensor we will be unable to fill any orders received after June 6th at old prices. We are not positive from your letter whether it will be satisfactory for us to fill order at new 3
price or not.

We understand that you have not yet signed contract, but that you will probably do so in a short time.

Our Mr. Caldwell is in Toledo at present attending the meeting of the Central Supply Association, and upon his return we can advise you definitely what we can do. In the meantime, however, we would like to know if it would be agreeable to ship the sink at the new price.

Yours truly,
THE CAHILL IRON WORKS
By H. W. POWELL. 4

HWP/W

1 PETITIONER'S EXHIBIT No. 178.

Filed Nov. 4, 1910.

June 16, 1910.

The Cahill Iron Works,
Chattanooga, Tenn.

Gentlement:

We have yours of the 14th and note carefully what you say. The position you take regarding the order in question is not giving us a fair treatment, as it seems to us that all
2 orders taken by your customers prior to June 6th should be filled at the old price. The sink in question was sold to one of our customers when we knew nothing of the new arrangement and our selling price was based on price we had from you. As we accepted this order in good faith from our customer we feel in duty bound to furnish the sink in question and we will have to ask you to ship same at once regardless of consequences. You will therefore please make immediate shipment of this sink even if you are compelled to charge the new price.

As your letter was received during our Mr. Sullwolds'
3 absence, we have placed same on his desk so that he can reply to the balance of its contents after his arrival.

Yours very truly,
THE WESTERN SUPPLY CO.
(Signed) W. P. MILLER.

4

PETITIONER'S EXHIBIT No. 179.

Filed Nov. 4, 1910.

MANNERS
F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.

Chattanooga, Tenn. U. S. A.
June 20, 1910.

The Western Supply Co.,
St. Paul, Minn.

Gentlemen:—

Answering your favor of June 16th, the writer, Mr. Caldwell, has looked over the correspondence, and copy of our letter written you June 14th.

It is not our purpose or intention to try to embarrass any of our customers in any manner, shape or form that we can avoid. This license arrangement was put up to us as one to which the jobbers themselves were very favorable indeed. We had been using a patent dredger of our own, and if we had refused to accept the license agreement we would have had a suit for infringement, and you never know how a law suit will come out. We might possibly have found that we were infringing; inasmuch as the patent has stood the test of several law suits, we thought the best thing for us to do was to accept the license.

Now, if the jobbers do not like the jobbers' agreement, for our part, we say by all means, not to undertake to carry it out, but, of course, you know, we haven't the control of our business as we had before.

We certainly do not want to embarrass you, as stated, and we will ship this order to you at once, inasmuch as you say you took it before June 6th. We are requested, however, not to do this. Our doing so might get us into trouble, if you are not particular about keeping the matter strictly confidential.

As to any other orders you may send us, we are not, under the present conditions of our license agreement, in position to take orders except from those who have accepted and signed the regular license agreement. We have taken the matter into our own hands to accommodate you, believing

that it is only just and fair treatment in this instance, your not having had the notice in advance.

It may be that if there are a great many who do not approve of this arrangement the matter will, so far as having the jobber sign the agreement, go overboard in a short while and nothing further done in that respect. This, of course, is mere conjecture on our part, as we know nothing of any definite movement towards that end. Will send the order on soon as possible.

Yours truly,
THE CAHILL IRON WORKS,
Per F. H. CALDWELL,
Prest.

FHC/C

PETITIONER'S EXHIBIT No. 180.

Filed Nov. 4, 1910.

June 23, 1910.

The Cahill Iron Works,
Chattanooga, Tenn.

Gentlemen:—

Yours of the 20th at hand and contents carefully noted. We thank you very much for your expression in this letter and also that you will ship the goods we had orders for and that were specified before this re-sale proposition was sent out.

We find that a great many jobbers were in favor of a re-sale plan and wrote their manufacturers accordingly, ourselves among others. In doing this the jobbers were assuming that the enameled re-sale plan would be worked out on similar plans as the re-sale plan on pipe. We also find in forming this plan that it was not submitted to some of the best jobbers in the country at all to get their views, but simply railroaded through and put up to the jobbers to come right into line. The writer personally was in Chicago at two different times in May and tried to learn something about the plan but was unable to do so. He was also advised that the manufacturers did not contemplate making any advance in the jobbers price at this time.

It effects our Company just this way—In the first place the manufacturers desire to advance their prices to us about 10%. The proposed re-sale price leaves us less profit than we were getting before. We are large handlers of Kohler's small ware; in fact, put Kohler's small ware on the market in the northwest and started with them when they started. We have their goods illustrated in our expensive catalogues and have six thousand dollars worth of catalogues in the hands of the printers at this time illustrating these goods. We are asked to join hands with the jobber who has not been capable of running his business on a proper basis. We are asked to pay the manufacturers more money for this product, and we are not adverse that the manufacturer should receive reasonable returns as we expect reasonable returns; but we are asked to sell these goods at a less profit than we have been getting; in other words, we are asked to help the manufacturer make more money at our expense.

This don't look like a good business proposition to us. We believe it, on the advise of good counsel, to be in restraint of trade and illegal.

The writer personally has given this matter a great deal of thought. It has always been his desire to work in harmony with the manufacturers and jobbers in this line; but as far as we are concerned we cannot see any good feature in this plan at all.

Received a telegram from Mr. Wayman, which reads as follows: "Please wire at once at my expense if you have executed or intend to execute jobbers license agreement", and we replied "No sir and do not intend to", and we mean every word of it.

Again thanking you for your letter, we are,

Yours very truly,

WESTERN SUPPLY CO.

dict. J.L.S. Per J. L. SULLWOLD.

PETITIONER'S EXHIBIT No. 181.

Filed Nov. 4, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-791022-I

July 9th, 1910.

Mr. J. L. Sullwold,
c/o The Western Supply Co.,
St. Paul, Minn.

Dear Sir:—

Referring to our conversation in Chicago with reference to Jobbers' License Agreement, I had hoped to take the matter up further with you the next day but was unable to locate you.

In accordance with our conversation, I wish to supplement my letter of June 10th with the following:

> "If you will execute the Jobbers' License Agreement, it will be satisfactory for you to continue purchasing Ware made by the J. M. Kohler Sons Co., Sheboygan, Wis. until further notice, with the understanding that you will stock some Licensed Ware and push the sale of it and that you will furnish me with the amounts of your total purchases from the Kohler Co. monthly. These amounts need not be itemized."

I hope that Mr. Kohler will in the future see fit to manufacture Ware under Patents that I own for the reason that I believe he can make better goods than he is making at the present time and more economically. I had hoped to go further into the matter with you on the next day, but will try and see you again in Chicago when you find it convenient to be there if you will let me know.

I am very pleased to make your acquaintance and trust we will become better acquainted in the future.

With kind regards and trusting that you reached home safely, I am,

Yours very truly,

(Signed) E. L. WAYMAN.

1 PETITIONER'S EXHIBIT No. 182.

Filed Nov. 4, 1910.

June 7, 1910.

Mr. Edwin L. Wayman,
Pittsburgh, Pa.

Dear Sir:—

As we purchase our small enameled ware principally from J. M. Kohler Sons Co., Sheboygan, Wis., we ask for a written permission to continue to sell this commodity, so
2 that we may continue to deal with this concern, whose goods we have illustrated in our catalogues and enjoy the full rebates of the licensed jobbers agreement.

Yours very truly,
WESTERN SUPPLY CO.,
Per J. L. SULLWOLD.

dict. J.L.S.

3

4

PETITIONER'S EXHIBIT No. 183.

Filed Nov. 4, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-6101008-R.

June 10, 1910.

The Western Supply Co.,
St. Paul, Minn.

Gentlemen:—

Replying to your letter of the 7th. it is impossible for me to give you permission to continue buying goods from the J. M. Kohler Sons Co., Sheboygan, Wis. This Company has been invited to execute a license agreement and use the patented process, but has not seen fit to do so. I would like to have them execute an agreement, but if they will not it is impossible to concede to any of their customers the right to purchase their goods if the customers desire to purchase licensed ware.

I hope that you will take the matter up with them and try and convince them that they should manufacture goods in accordance with the other Companies.

Yours very truly,

E. L. WAYMAN,
Licensor.

Received
June 13, 1910.
THE WESTERN SUPPLY CO.

1 **PETITIONER'S EXHIBIT No. 184.**

Filed Nov. 4, 1910.

July 11, 1910

Mr. E. L. Wayman,
Pittsburgh, Pa.

Dear Sir:—

Yours of the 9th at hand and noted. I beg to state that the proposition outlined in your letter is an insult to any one of ordinary intelligence and our Company will now take
2 the stand that we will use all honorable means to break up this illegal combination.

We shall continue to use Kohler goods.

Yours respectfully,
WESTERN SUPPLY CO.,
Per J. L. SULLWOLD.

dict. J.L.S.

3 **PETITIONER'S EXHIBIT No. 185.**

Filed Nov. 4, 1910.
EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-7141005-C

July 14, 1910.

Mr. J. L. Sullwold,
c/o Western Supply Co.,
St. Paul, Minn.

4 Dear Sir:—

This is to acknowledge receipt of your letter of the 11th inst., for which please accept my thanks.

Yours very truly,
E. L. WAYMAN.

PETITIONER'S EXHIBIT No. 187. 1

Filed Nov. 4, 1910.

F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A. 2

Aug. 10, 1910.

Illinois Malleable Iron Co.,
Chicago, Ill.

Gentlemen:—

We are in receipt of your valued orders Nos. 7883 and 7820, and would take pleasure in filling same, but in accepting a license we are obligated to sell only those jobbers who have executed a jobber's agreement. Our records show that we mailed you this agreement in duplicate, and, if you will sign and return one copy to us, we will be very glad to fill 3 your order at once.

If agreement referred to is misplaced, we will be pleased to mail you two more copies.

Very respectfully,
THE CAHILL IRON WORKS.

FHC/W

4

1 **PETITIONER'S EXHIBIT No. 184.**

Filed Nov. 4, 1910.

July 11, 1910

Mr. E. L. Wayman,
Pittsburgh, Pa.

Dear Sir:—

Yours of the 9th at hand and noted. I beg to state that the proposition outlined in your letter is an insult to any one of ordinary intelligence and our Company will now take
2 the stand that we will use all honorable means to break up this illegal combination.

We shall continue to use Kohler goods.

Yours respectfully,
WESTERN SUPPLY CO.,
Per J. L. SULLWOLD.

dict. J.L.S.

3 **PETITIONER'S EXHIBIT No. 185.**

Filed Nov. 4, 1910.
EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-7141005-C

July 14, 1910.

Mr. J. L. Sullwold,
c/o Western Supply Co.,
St. Paul, Minn.

4 Dear Sir:—

This is to acknowledge receipt of your letter of the 11th inst., for which please accept my thanks.

Yours very truly,
E. L. WAYMAN.

PETITIONER'S EXHIBIT No. 187.

Filed Nov. 4, 1910.

F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.

Aug. 10, 1910.

Illinois Malleable Iron Co.,
Chicago, Ill.

Gentlemen:—

We are in receipt of your valued orders Nos. 7883 and 7820, and would take pleasure in filling same, but in accepting a license we are obligated to sell only those jobbers who have executed a jobber's agreement. Our records show that we mailed you this agreement in duplicate, and, if you will sign and return one copy to us, we will be very glad to fill your order at once.

If agreement referred to is misplaced, we will be pleased to mail you two more copies.

Very respectfully,
THE CAHILL IRON WORKS.

FHC/W

1 **PETITIONER'S EXHIBIT No. 188.**

UNITED STATES SANITARY MFG. CO.
Enameled Iron Baths

General offices	and	Works
Arrott Building	Plumbing Goods	Monaca, Pa.

Pittsburgh, Pa.

May 31, 1910.

The Illinois Malleable Iron Co.,
Chicago, Ill.

2 Gentlemen:—

Enclosed find copies in duplicate of contracts covering the purchase of Licensed U. S. Sanitary Enameled Iron Ware for the period beginning June 1st and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you Licensed Sanitary Enameled Ware.

Yours very truly,
UNITED STATES SANITARY MFG. CO.
A. H. CLINE, Jr.

3 AHC.-R. *Secretary*

4

PETITIONER'S EXHIBIT No. 189.

Filed Nov. 4, 1910.

STANDARD SANITARY MFG. CO.
General Offices.
Pittsburgh, U. S. A.

In reply refer to No. 60709.

Chicago Office
415 Ashland Block

Chicago, Ill.

Illinois Malleable Iron Co.,
Chicago, Ill.

For attention of Mr. Schwendau.

Gentlemen:—

Answering your favor of yesterday, just received, in reference to the tubs, I have taken the matter up with our Louisville people about the order you give and expect an answer tomorrow morning.

Now regarding the 5 fts., I will have to ascertain from them first whether they have any in stock or not, as our tub stock was practically wiped out last week.

Regarding the last paragraph of your letter, will you kindly advise me if it is the intention of your company to sign the jobbers license agreement under the re-sale arrangement on enameled ware. We must have this before we can quote. If you will very kindly give me this information I will be very glad to reply to that part of your letter.

Yours truly,
STANDARD SANITARY MFG. CO.
(signed) W. S. VITLY.

WSV/W

PETITIONER'S EXHIBIT No. 190.

Filed Nov. 4, 1910.

UNITED STATES SANITARY MFG. CO.

Enameled Iron Baths and Plumbing Goods

General offices Arrott Building Pittsburgh, Pa.

Works Monaca, Pa.

June 11, 1910.

The Illinois Malleable Iron Company,
Chicago, Ill.

Gentlemen:—

We received in this morning's mail your orders #7666 and #7665 calling for flat rim and roll rim enameled Sinks. We regret to state that we cannot execute these orders until we receive your signed resale contract. Our contract with the Licensor, Mr. E. L. Wayman, which went into effect on June 1st, positively prohibits our accepting any orders after June 6th except from jobbers who have signed the resale contract. We regret having to take this action, but we have no alternative whatever in the matter, as our contract with Mr. Wayman is positively binding upon this point. We would thank you to sign and return to us your resale contract as early as possible so that not to delay shipment of your orders.

Yours very truly,
UNITED STATES SANITARY MFG. CO.,
A. H. CLINE, JR.
Secretary.

AHC-R.

PETITIONER'S EXHIBIT No. 191.

Filed Nov. 4, 1910.

All quotations, orders and contracts are subject to car supply, strikes, accidents and causes beyond our control.

F. G. Borden, President — S. Grove, Jr., Vice-President — D. W. Davis, Sec'y-Treas.

Main Office and Works at
Salem, Ohio.

THE NATIONAL SANITARY MANUFACTURING CO.
Manufacturers of
Highest Grade Improved
Porcelain Enameled Cast Iron Bath Tubs,
Lavatories, Sinks, etc.

Salem, Ohio, August 25, 1910.

Illinois Malleable Iron Co.,
Chicago, Ill.

Gentlemen:—

We received your order No. 8001 dated Aug. 23rd. for two plate N-470 Closet Tanks. We regret very much that we cannot see our way clear to fill this order on account of you not thinking it advisable to sign the License Agreement we sent you a few weeks ago, and therefore return the order.

We would further state that we have these fixtures in stock and can make prompt shipment if you would sign the License Agreement referred to.

Trusting we shall hear from you, we remain,

Yours truly,
THE NATIONAL SANITARY MFG. CO.,
(Signed) D. W. DAVIS,
Sec'y. Treas.

1 **PETITIONER'S EXHIBIT No. 192.**

Filed Nov. 4, 1910.

UNITED STATES SANITARY MFG. CO.

Enameled Iron Baths and Plumbing Goods

General offices Arrott Building Pittsburgh, Pa. Works Monaca, Pa.

May 20, 1910.

The Illinois Malleable Iron Co.,
Chicago, Ill.

2 Gentlemen:—

There has been a deal consummated, whereby Mr. E. L. Wayman has become the possessor, through purchase, of three basic patents which are very valuable in the manufacture of sanitary enameled iron ware, and he has licensed certain manufacturers to manufacture their product under these patents, ourselves being one of the licensed manufacturers, and in licensing all of the manufacturers he has stipulated certain terms under which the goods manufactured under this license shall be sold, and we want to explain to you as
3 clear as it is possible, just the conditions that will exist when this arrangement is put into effect June 1st. Our Mr. Plath expects to be in your City shortly, and will personally try to make this a little clearer to you than can be done by letter.

To begin with, these patents are all bona fide and are quite necessary for the successful manufacture of enameled ware, and Mr. Wayman has purchased these for a cash consideration and is charging royalty on all of the ware made by the different manufacturers. He is charging an excessive royalty to the manufacturer at first, but there is to be a
4 rebate of 80% of this royalty to the manufacturer at the end of a certain period, provided they have lived up to all the agreements of their licensed contract with Mr. Wayman. So far for the manufacturers end of it.

Now, as to the jobbers proposition, the manufacturer will sell to the jobber at certain prices and the jobber will resell to the plumber at certain prices, as enumerated by the Licensor, Mr. Wayman. All goods will be billed to the jobber at the resale price. From this he will be allowed a special concession of 5% for all goods purchased in carloads. Then,

on all high grade baths and lavatories, he will be allowed an additional 7½% from the face of the invoice. On competition tubs and sinks, and competition types of lavatories, he will be allowed an additional 5%. This is all that will be allowed on the face of the invoice. Then, if the jobber has lived up to all the provisions of the contract which he has signed before being able to purchase any goods from licensed manufacturers (which I will explain later on) he will be entitled to an additional 5% at the end of six months for complying with this contract. In addition to this, if he has purchased $10,000.00 worth of goods from all the licensed manufacturers collectively during the six months, he will be entitled to another 2½%. If he has purchased $25,000.00 worth of goods from all the manufacturers collectively in six months, he will be entitled to 5% in place of 2½% as mentioned above. Then, if a jobber has carried out all the provisions of his contract and has purchased $25,000.00 worth of goods in the first six months, he will make a net profit on his sales, on the high grade goods of a little over 21% and on the competition goods a little over 18% on his sales. To illustrate, you will get 5% for carloads a 5% or 7½% as the grade of goods may call for off the face of the bill, then his additional 5% for being good at the end of six months and his additional 5% for quantity purchased from all of the manufacturers if the same amounts to $25,000.00. Now, in order to carry this out it becomes necessary, and is agreed between the licensor and each manufacturer, that before selling any goods to any jobber after June 1st, he must receive from this jobber a contract (sample of which will be submitted to you very shortly). In this contract, the jobber agrees to purchase no goods other than those licensed by the licensor, and should he purchase any goods outside of the goods manufactured by the licensed manufacturers, he will forfeit his right to purchase from the licensed manufacturers and also will forfeit the rebates which are due him on all goods purchased from the licensed manufacturers. This is no pool, but it is an absolute legal agreement, approved by the United States Government, for when the Government grants a patent they also grant a monopoly to the owner of this patent to establish any terms he may wish for the sale or handling of goods manufactured under this patent, and all of the goods manufactured by the licensed manufacturers will be made under these patents and

will bear the label of the licensor stating that they are a patented article, and the jobber does not make an agreement with the manufacturers collectively, but he makes a contract with each manufacturer from whom he purchases any enameled ware. If we were to get an order for one lavatory from a jobber, we would not be able to ship this until we have this jobbers signed contract.

Now, this resale will go into effect June 1st, and the jobber in his contract agrees to not only resell any goods that he purchases after June 1st, but to resell all goods which he now has on hand or has coming to him at the resale price established by the licensor, no matter what the goods cost or whose manufacture.

We have simply given you a brief outline of what this proposition is and if there are any questions you would like to ask, we would be glad indeed to answer them as fully as possible. As stated above, between now and June 1st our Mr. Plath will see you and explain this matter to you as fully as it possible for any one to do, and we believe he will make it very clear to you that this is for the best interests of the jobber, as there will not be a raise in price on putting this into effect.

Trusting that this explanation is clear to you, and if not that you will feel free to ask any question, and assuring you that the manufacturers are doing this with the best interest of the jobbers at heart, beg to remain,

Yours respectfully,

UNITED STATES SANITARY MFG. CO.,

A. H. CLINE, JR.,

Secretary.

AHC-R.

PETITIONER'S EXHIBIT No. 193. 1

Filed Nov. 4, 1910.

THE McCRUM-HOWELL CO.
Branches and Agents All Cities
General offices
Park Ave. & 41st Street
New York

"RICHMOND"
Boilers, Radiators,
Bath Tubs, Sinks,
Lavatories, Suction
Cleaners, Soap Savers,
Concealed Transom Lifts.

Boiler Plant
Norwich, Conn.
Radiator Plant
Uniontown, Pa. 2
Enameled Ware Plant
Uniontown, Pa.
Electric Plant
Racine, Wis.

Office of
Sam O. Dugger
Western Representative

Telephone:
Randolph 3680.

114 Dearborn Street, Chicago

6/24/10

The D. M. Gilmore Co.,
Minneapolis, Minn. 3

Gentlemen:—

Please advise me whether or not you have received a copy of the price book from Mr. Wayman. If you have not, I want to keep after him until you are supplied.

You have not as yet returned the Jobber's License Agreement. Beg to inquire whether or not you have signed same and if we will have the pleasure of receiving a copy by early mail.

With kind regards, I am,

Yours very truly, 4

SOD/S.

S. O. DUGGER

1 PETITIONER'S EXHIBIT No. 194.

Filed Nov. 4, 1910.

THE NORTH AMERICAN TELEGRAPH COMPANY.
TELEGRAM.

Minneapolis, Minn. July 28, 1910.

McCrum-Howell Co.,
New York City.

Can you ship fifty Plate E six seventy immediately old price. Wire Answer.

2 THE D. M. GILMORE CO.

3

4

PETITIONER'S EXHIBIT No. 196. 1

Filed Nov. 4, 1910.

Mann C. Eichel. Edwin A. Eichel.

EICHEL & COMPANY,
Manufacturers' Agents
Plumbing, Hardware and Mill Supplies,
We sell Jobbers Only.
P. O. Box 716.
Richmond, Virginia.

Selling Agents 2
Rome Soil Pipe Mfg. Co.
Sheffield Casting & Mfg. Co.
Cast Iron Soil Pipe
and Fittings.

Selling Agents
The National Sanitary Mfg. Co.
Porcelain Enameled Cast Iron Bath Tubs,
Lavatories Sinks, etc.
Morse Iron Works
Malleable and cast iron fittings.

July 8, 1910. 3

The D. M. Gilmore Co.,
Minneapolis, Minn.

Gentlemen:—

We are today in receipt of your valued letter of the 6th. inst. and we thank you very much for same.

We trust you will pardon our delay in not answering your letter which was addressed to our Factory and referred by them to us, but we did not have a Catalogue here the day your letter was received and as the Factory had expressed 4
us a quantity of these, we expected same every day, but for some reason or other they were miscarried and only arrived this A.M. We are sending you in this mail a copy of same, and will of course be pleased to furnish you with as many additional copies as you might require.

We have written the Factory to send you at once a copy of our or rather of Mr. Wayman's re-sale price list, and they will do this immediately and you will find Minneapolis in Zone 3 of this price-book. We beg to enclose herewith two

copies of our contracts, which we will thank you to sign and return one copy, the other being your copy, and in addition to the prices and discounts shown in the Price-book and the extra discounts shown in the Contract, copy of which we are enclosing, we can make you the following extra discounts on our WARE:

We have the following preferentials beyond discounts shown as mentioned on preceding page of this letter, which we are pleased to quote you:

5 Year Guarantee Tubs	5%
2 " " "	2½%
Lavatories, except those similar to Plates P 558-559-561-562 as shown in Standard San. Mfg. Co. Catalogue	2½%
Roll Rim Sinks and Slop Sinks	2½%

The prices shown in Price-book and Contract are our lowest Selling Prices on NON-GUARANTEED TUBS, FLAT RIM SINKS, CLOSET TANKS, ETC.

The special preferentials shown above are as stated in addition to the discounts mentioned in Price-book and Contracts, but are subject to same conditions as other discounts.

Now about our WARE, we are making the WHITEST ENAMEL WARE on the market today, and it is GUARANTEED UNCONDITIONALLY against CHIPPING or CRAZING, and then all of our LAVATORIES have the DEPRESSED SOAP CUP CAST in them, which is a feature found only in our WARE.

We know that the WARE will please both You and Your Trade and we assure you that a share of your patronage in this line will be very greatly appreciated by us, and will receive our prompt and personal attention at all times.

Yours very truly,

EICHEL & COMPANY,

By EDWIN A. EICHEL.

E/A

PETITIONER'S EXHIBIT No. 197.

Filed Nov. 4, 1910.

F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.
August 8, 1910.

The D. M. Gilmore Co.,
513 S. Third St.,
Minneapolis, Minn.

Gentlemen:

Answering Mr. Gilmore's favor of August 5th.

Mr. Caldwell, our President, spent lask week in New York; when there he saw Mr. Wayman and other manufacturers and this line was talked over pretty fully. The newspapers have badly misrepresented the suit that the Government is making. The attorney that Mr. Wayman has engaged is regarded as the finest patent attorney in New York and is thoroughly familiar with matters of this kind and has explained the matter correctly. The suit is a case in equity no indictments are made, but it is a case in which the Government undertakes to dissolve the combination, claiming it is illegal and that we have no right to do under the patent what Wayman is claiming to do.

If this is settled adversely Mr. Wayman and the licensees will simply have to do business as they did before. The attorneys claim however that it is perfectly legal under the patent laws and until it is decided adversely attorneys advise us to go on and do business just as we have been doing.

We understood that Mr. Wayman was going to make a special trip to Minneapolis to try to make some arrangements by which everything could be harmonized. You want to understand that we are accepting the license from Wayman and any arrangements that you can do with one licensed manufacturer, you can do the same with us. Should you decide to sign the contract and will agree to carry our

goods in carload lots we will be only too pleased to have you do so and also to give you the exclusive sale of our goods in your city, with the understanding that you handle them in carload lots. You can understand, of course, that any concession Mr. Wayman decides to make that applies to the Standard or other manufacturer we have the same right to make the same concession ourselves.

Should you decide to sign the license to carry the licensed enamel ware, we will be glad to confer with you further, and we hope to get you to handle our line in your city.

With best regards and kindest wishes, we beg to remain,

Yours truly,

THE CAHILL IRON WORKS.

Per F. H. C.

President.

FHC/P

PETITIONER'S EXHIBIT No. 198. 1

Filed Nov. 4, 1910.

F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.
Aug. 15, 1910. 2

The D. M. Gilmore Co.,
Minneapolis, Minn.

Gentlemen:—

We are in receipt of your order of the 11th for two Plate F-102½ 24x33 lavatories which you ask us to ship at once.

Would state that we have not heard from you yet in regard to signing License Agreement, but we trust when Mr. Wayman was in your city a few days since he made satisfactory arrangements, and that you will sign the agreement. 3

We appreciate the business you have been giving us, and we desire to continue receiving same, if possible.

In order to accommodate you, we have decided to ship this order at once, but we would ask you to kindly not consider this a precedent, and not to feel from our action that we can break our agreement. Having accepted a license, we feel that we must live up to the terms of the contract, but, for reasons stated above, as we believe you will sign this contract in a short time, we are going to fill this order. We trust that you will appreciate our action 4 in the matter, and would ask you to kindly keep same strictly confidential.

Yours truly,
THE CAHILL IRON WORKS
H. W. POWELL

H.W.P./W

1 PETITIONER'S EXHIBIT No. 199.

Filed Nov. 4, 1910.

Night Letter

WESTERN UNION TELEGRAPH COMPANY.

1438

Received at Minneapolis, Minn.
260 Hennepin Ave.,

492 z.hn. 30 N.L. 1010 pm.
D. M. Gilmore, Co.,
2 Mpls.

New York wires me they cannot ship tubs unless you sign agreement. I advise your doing so, at once, I will be in Chicago Saturday, hope to see you next week.

S. O. DUGGER.

3

4

PETITIONER'S EXHIBIT No. 200. 1

Filed Nov. 4, 1910.

THE McCRUM-HOWELL CO.
Branches and Agents All Cities
General offices
Park Ave. & 41st Street
New York

"RICHMOND"
Boilers, Radiators,
Bath Tubs, Sinks,
Lavatories, Suction
Cleaners, Soap Savers,
Concealed Transom Lifts.

Boiler Plant
Norwich, Conn.
Radiator Plant
Uniontown, Pa. 2
Enameled Ware Plant
Uniontown, Pa.
Electric Plant
Racine, Wis.

Office of
Sam O. Dugger
Western Representative

Telephone:
Randolph 3680.

114 Dearborn Street, Chicago

8/26/10

D. M. Gilmore Co., 3
Minneapolis, Minn.

Gentlemen:—

The writer just returned to the City this morning.

As I wired you from Kansas City, I received a telegram from the home office notifying me that you had asked them to ship some tubs and that it was absolutely necessary for you to sign the Enameled Ware Contract before they could do so. In my telegram to you I advised your signing it at once.

Upon my return to the office I found a letter from our 4
Secretary in which he states that Mr. Wayman was sending a letter to the jobbers in your territory *who had signed up their contracts.* He has stated to them that they are at liberty to quote from 10 to 12½% below the re-sale price in the district effected by the Western Plumbing Supply Co. You can see from this that it is Mr. Wayman's intention to protect the jobbers who have *signed the agreement* against the cut prices being made by certain jobbers who are not co-operating in the re-sale price.

As I stated to you on two or three different occasions, we certainly want to do business with you and I want you to sign up the agreement so you will receive the benefits of any action taken by Mr. Wayman in matters of this character.

I trust that you have signed this agreement and sent it in without delay. Also that you have favored us with this order.

As I wired you, I am trying very hard to get up to see you the first part of the coming week.

Yours very truly,

S. O. DUGGER.

P. S. I want you to treat this letter as strictly confidential for I am not sure whether or not I am at liberty to give you this information.

PETITIONER'S EXHIBIT No. 201. 1

Filed Nov. 4, 1910.

THE McCRUM-HOWELL CO.
Branches and Agents All Cities
General offices
Park Ave. & 41st Street
New York

114 Dearborn Street, Chicago

Office of
Sam O. Dugger
Western Representative

Telephone:
Randolph 3680. 2

9/12/10

The D. M. Gilmore Co.,
Minneapolis, Minn.

Gentlemen:—

Since seeing you I have been in correspondence with the factory and have a letter from them dated Sept. 8th, stating that the back orders they have on their files for you, consist of the following:— 3

7, 5½x30" 5 year guaranteed Tubs
8, 5x30" 5 " " "
5, #649 Lavatories,
40, #620 "

These they say they will be very glad to ship to you at the prices at which the orders were placed as a local shipment, allowing the regular freight.

I trust that you will make up your mind to sign the Agreement and send me additional specifications at the prices in effect to-day to make up a car for shipment. We have talked this matter over so many times, that there is 4 really nothing more that I can say just at this time. As it is, as I see it, a matter that you will have to settle in your own minds as to just what you want to do.

With very kind regards, and hoping to hear from you soon, I am,

Yours very truly,

SOD/S. S. O. DUGGER.

1

PETITIONER'S EXHIBIT No. 202.

Filed Nov. 4, 1910.

9/16/10.

Mr. Sam O. Dugger,
114 Dearborn St.,
Chicago, Ill.

Friend Sam:—

Yours of the 12th inst. in reference to back-order to hand. If you could revise this back-order and ship us:

2

7—5½x30 Bath Tubs—2 yr. Guarantee
8—5 x30 " " —2 yr. Guarantee.
5—#640 Lavatory
40—#660 Lavatory.

We would greatly appreciate this back-order, but, unless you can revise same, we prefer to cancel same. Trust and hope that you will be able and will do all in your power to revise same, and thanking you in advance, we remain,

Yours very truly,

THE D. M. GILMORE CO.

3

4

PETITIONER'S EXHIBIT No. 203. 1

Filed Nov. 4, 1910.

THE McCRUM-HOWELL CO.
Branches and Agents All Cities
General offices
Park Ave. & 41st Street
New York

Office of
Sam O. Dugger
Western Representative
114 Dearborn Street, Chicago

Telephone:
Randolph 3680. 2

9/19/10

Messrs. D. M. Gilmore Co.,
Minneapolis, Minn.

Gentlemen:—

I have yours of the 16th asking us to make a change in the back orders which we have on our books for you for "Richmond" Enameled Ware and have referred this matter to the factory. I feel quite sure that they will comply with your request. 3

As I understand it, if they are willing to make this change, you want us to make local shipment on a basis of our making you the usual freight allowance on less than carload shipments. If I am not correct in this, please advise me at once.

With very kind regards, I am,

Yours very truly,

SOD/S. S. O. DUGGER

4

1 PETITIONER'S EXHIBIT No. 204.

Filed Nov. 4, 1910.

L. C. Huesmann, President.
I. G. Smith, 1st Vice-President.
C. E. Gates, 2nd Vice-President & Mgr.
E. V. Brigham, Sec'y. & Treas.

UNION SANITARY MFG. CO.
Successors to the McElwaine-Richards Company.
Manufacturers of
Cast Iron Enameled Bath Tubs, Lavatories and Sinks,
2 Soil Pipe and Soil Pipe Fittings.

Noblesville, Indiana.
June 6, 1910.

D. M. Gilmore Co.,
Minneapolis, Ind.

Gentlemen:—

Enclosed find copies in duplicate of Contracts covering the purchase of Licensed Union Sanitary Mfg. Co.'s Sanitary Enameled Iron Ware for the period beginning June
3 6th and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you Licensed Sanitary Enameled Ware.

Yours truly,
EVB. UNION SANITARY MFG. CO.

4

PETITIONER'S EXHIBIT No. 205. 1

Filed Nov. 4, 1910.

WHEELING ENAMELED-IRON CO.
Manufacturers
of
Sanitary
"PORCELIRON"

Elm Grove, W. Va., June 6, 1910

Gentlemen:—

Enclosed find copies in duplicate of Contracts covering 2
the purchase of Licensed Wheeling Sanitary Enameled Iron Ware for the period beginning June 1st and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these Contracts before we can sell you Licensed Sanitary Enameled Ware.

We are prepared to offer you a further discount of 5% on the Five-year Guaranteed Bath Tubs and 2½% on the Two-year Guaranteed Bath Tubs purchased from us during the life of this Contract.

These additional discounts will be deducted from the face 3
of the Invoice.

Thanking you for your courtesy and prompt attention, and soliciting a share of your valued patronage, we are,

Yours respectfully,

GWF/MR WHEELING ENAMELED-IRON CO.

4

1 **PETITIONER'S EXHIBIT No. 206.**

Filed Nov. 4, 1910.

F. H. Caldwell, President Established 1875.
J. J. Mahoney, General Manager.

THE CAHILL IRON WORKS.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.
June 1, 1910.

2 Enclosed find copies in duplicate of Contracts covering the purchase of Licensed "Southern Beauty" Sanitary Enameled Iron Ware for the period beginning June 1st and ending Dec. 31, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these contracts before we can sell you Licensed Sanitary Enameled Ware.

Yours truly,
THE CAHILL IRON WORKS.

3

4

PETITIONER'S EXHIBIT No. 207.

Filed Nov. 4, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-6181013-R

June 18, 1910.

Chandler Pump Company,
Cedar Rapids, Iowa.

Gentlemen:—

I am in receipt of your telegram of today stating that you do not feel justified in signing at present. I trust you will see your way clear to execute this agreement within the next few days as it covers a matter which is entirely for the jobbers benefit. The Cedar Rapids Pump Company of your city, have executed the agreement, and I hope you will co-operate immediately with your local competitors, which will be much more advantageous than a continuous cut market.

Will you not telegraph me upon receipt of this letter that you will execute the agreement in order that the matter may be adjusted in your city at once.

Yours very truly,

(Signed) E. L. WAYMAN.

1 PETITIONER'S EXHIBIT No. 208.

Filed Nov. 4, 1910.

UNITED STATES SANITARY MFG. CO.

Enameled Iron Baths

General offices	and	Works
Arrott Building	Plumbing Goods	Monaca, Pa.
	Pittsburgh, Pa.	

May 24, 1910.

Chandler Pump Co.,
2 Cedar Rapids, Iowa.

Gentlemen:

There has been a deal consummated, whereby Mr. E. L. Wayman has become the possessor, through purchase, of three basic patents which are very valuable in the manufacture of sanitary enameled iron ware, and he has licensed certain manufacturers to manufacture their product under these patents, ourselves being one of the licensed manufacturers, and in licensing all of the manufacturers he has stipulated certain terms under which the goods manufac-
3 tured under this license shall be sold, and we want to explain to you as clear as it is possible, just the conditions that will exist when this arrangement is put into effect June 1st. Our Mr. Plath expects to be in your City shortly, and will personally try to make this a little clearer to you than can be done by letter.

To begin with, these patents are all bona fide and are quite necessary for the successful manufacture of enameled ware, and Mr. Wayman has purchased these for a cash consideration and is charging royalty on all of the ware made by the different manufacturers. He is charging an
4 excessive royalty at first, but there is to be a rebate of 80% of this royalty to the manufacturer at the end of a certain period, provided they have lived up to all the agreements of their licensed contract with Mr. Wayman. So far for the manufacturers end of it.

Now, as to the jobbers proposition, the manufacturer will sell to the jobber at certain prices and the jobber will resell to the plumber at certain prices, as enumerated by the licensor, Mr. Wayman. All goods will be billed to the jobber at the resale price. From this he will be allowed

a special concession of 5% for all goods purchased in carloads. Then, on all high grade baths and lavatories, he will be allowed an additional 7½% from the face of the invoice. On competition tubs and sinks, and competition types of lavatories, he will be allowed an additional 5%. This is all that will be allowed on the face of the invoice. Then, if the jobber has lived up to all the provisions of the contract which he has signed before being able to purchase any goods from licensed manufacturers (which I will explain later on) he will be entitled to an additional 5% at the end of six months for complying with this contract. In addition to this, if he has purchased $10,000.00 worth of goods from all the licensed manufacturers collectively during the six months, he will be entitled to another 2½%. If he has purchased $25,000.00 worth of goods from all the manufacturers collectively in six months, he will be entitled to 5% in place of 2½% as mentioned above. Thus, if a jobber has carried out all the provisions of his contract and has purchased $25,000.00 worth of goods in the first six months, he will make a net profit on his sales, on the high grade goods of a little over 21% and on the competition goods a little over 18% on his sales. To illustrate, you will get 5% for carloads, a 5% or 7½% as the grade of goods may call for off the face of the bill, then his additional 5% for being good at the end of six months and his additional 5% for quantity purchased from all of the manufacturers if the same amounts to $25,000.00. Now, in order to carry this out it becomes necessary, and is agreed between the licensor and each manufacturer, that before selling any goods to any jobber after June 1st, he must receive from this jobber a contract (sample of which will be submitted to you very shortly). In this contract, the jobber agrees to purchase no goods other than those licensed by the licensor, and should he purchase any goods outside of the goods manufactured by the licensed manufacturers, he will forfeit his right to purchase from the licensed manufacturers and also will forfeit the rebates which are due him on all goods purchased from the licensed manufacturers. This is no pool, but is an absolute legal agreement, approved by the United States Government, for when the Government grants a patent they also grant a monopoly to the owner of this patent to establish any terms he may wish for the sale or handling of goods manufactured under

this patent, and all of the goods manufactured by the licensed manufacturers will be made under these patents and will bear the label of the licensor stating that they are a patented article, and the jobber does not make an agreement with the manufacturers collectively, but he makes a contract with each manufacturer from whom he purchases any enameled ware. If we were to get an order from a jobber for one lavatory, we would not be able to ship this until we had the jobbers signed contract.

Now, this resale will go into effect June 1st, and the jobber in his contract agrees to not only resell any goods that he purchases after June 1st, but to resell all goods which he now has on hand or has coming to him at the resale prices established by the licensor, no matter what the goods cost or whose manufacture.

We have simply given you a brief outline of what this proposition is and if there are any questions you would like to ask, we would be glad indeed to answer them as fully as possible. As stated above, between now and June 1st, our Mr. Plath will see you and explain this matter to you as fully as it is possible for any one to do, and we believe he will make it very clear to you that this is for the best interests of the jobber, as there will not be a raise in price on putting this into effect.

Trusting that this explanation is clear to you, and if not that you will feel free to ask any questions, and assuring you that the manufacturers are doing this with the best interest of the jobbers at heart, beg to remain,

Yours very truly,

UNITED STATES SANITARY MFG. CO.

A. H. CLINE, Jr.

AHC-R. *Secretary.*

PETITIONER'S EXHIBIT No. 210.

Filed Nov. 23, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. 610241-B

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
1st Vice President.
Sales Department.

Pittsburg, U. S. A. 6/10/10.

Central Plumbers Supply Company,
New York, N. Y.

Gentlemen:—

We are in receipt of your valued order #23753 specifying a number of Plate P-601 sectional lavatories. In view of the fact that the sheets covering re-sale prices applying to our sectional lavatories has not been issued, we will arrange to enter your order and invoice at previous prices, provided you have signed the jobbers license agreement whereby you would be entitled to receive licensed sanitary enameled ware.

Yours very truly,
STANDARD SANITARY MFG. CO.
H. J. G. HECKMAN
Mgr. Quotation Department.

HJGH—

Answered
Jun 11 1910
C. S. Hirschfeld.

PETITIONER'S EXHIBIT No. 211.

Filed Nov. 23, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. O-71431-BC

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
1st Vice President.
Sales Department.

Pittsburg, U. S. A. July 14, 1910.

Answered
Jun 15 1910
C. S. Hirschfeld.

Central Plumbers Supply Company,
New York, N. Y.

Gentlemen:

We are in receipt of your favor of the 9th, reference C.S.H./D., addressed to New Brighton, wherein you advised that you were in receipt of postal card from them in regard to Order #23753 for P-601 Sectional Lavatories, which is marked for shipment to Hodge Bros., Mt. Vernon, N. Y.

In reference to releasing this material and making shipment, regret to advise that we cannot do so, although this material is at present prepared for shipment, but we have instructions not to make any shipment until in receipt of your signature to the Resale Agreement which was forwarded you sometime ago. Upon receipt of your signature we will make immediate shipment.

Yours truly,
STANDARD SANITARY MFG. CO.
Per H. A. CRAIG.

Answered
Jul 20 1910
C. S. Hirschfeld

Answered
Jul 18 1910
C. S. Hirschfeld.

PETITIONER'S EXHIBIT No. 212.

Filed Nov. 23, 1910.

J. A. Frauenheim, President. Carl Falk, V. Pres. A. M. Frauenheim, Treas.

Bell Telephones
134-J Zelienople: 1436 Court Pittsburg.
3584 Beekman, New York

General offices
1104 Union Bank Bldg.
Pittsburg, Pa.
Sales Office, 101
Beekman St. New York.

KERNER MANUFACTURING COMPANY
Manufacturers of
"White Seal" Enamel Ware.
Plant at Zelienople, Penna.

Kerner Mfg. Co.
Zelienople, Pa.
White Seal
Durability and Quality
Guaranteed.

Oct. 11, 1910.

Address all mail
to
Zelienople, Pa.

Central Plumbers Supply Co.,
252 Pearl St.,
New York City, N. Y.

Gentlemen:—

In reply to your letter of the 24th, we beg to state, that we will be glad to sell you, if you will agree to sign the enclosed Jobbers' License Agreement.

Trusting to hear from you, we beg to remain,

Yours truly,
KERNER MANUFACTURING CO.,
CARL FALK.

CF/MD

[NOTE: A Jobbers' License Agreement similar to Gov't's Ex. No. 11 is part of this exhibit but not printed.]

1 PETITIONER'S EXHIBIT No. 213.

Filed Nov. 23, 1910.

EDWIN L. WAYMAN
Arrott Building
Pittsburg.

June 3, 1910.

TO THE JOBBING TRADE:

The Sanitary Enameled Iron Ware industry has in the past been handicapped by the production and the marketing of quantities of "Seconds" or defective goods, due to im-
2 proper designs, manufacturing methods and equipment. Such goods have not been disposed of by the Manufacturers as other than "Seconds" but some unscrupulous Purchasers have in great many instances disposed of them by mis-representation thereby causing the Public who buy such goods to condemn Sanitary Enameled Iron Ware to the detriment of the industry as a whole.

The basic object of the Licensed Manufacturers in adopting uniform methods of manufacture is to eliminate as far as possible the production and disposal of "Seconds" thereby improving the general quality of their Ware.

3 The Patented Automatic Enameling Processes adopted by the Licensed Companies cover substantially all the ways in which Sanitary Enameled Iron Ware may be enameled economically and with durability and are essential to the production of Ware of the highest quality.

That the Ware, made in accordance with these Patented Processes, may be easily identified, each fixture manufactured after June 1st, 1910, will bear the following label.

LICENSED WARE
PATENTED
(Patent Label)

4

and its presence evidences that the best materials and processes have been employed in its manufacture.

Resale selling prices by Jobbers become effective as follows:

In the East of Missouri River Points, June 6th.
West of Missouri River Points to Pacific Coast Territory June 7th.
Pacific Coast Territory, June 9th.

DISTRIBUTION AND RESALE OF LICENSED SANITARY ENAMELED IRON WARE.

To purchase Licensed Sanitary Enameled Iron Ware, during the period beginning June 6th. and ending December 31st. 1910, it is necessary for you to execute a Jobbers' License Agreement Contract, sample of which is attached, with each of the Licensed Manufacturers with whom you may desire to deal. Copies for signature will be sent you in duplicate by each of the Licensed Manufacturers, the execution of which makes you a Licensed Distributor of Sanitary Enameled Iron Ware. Licensed Ware cannot be sold to you, if you have not executed these contracts.

PRICES

The selling prices to the Plumber are enclosed under separate cover in loose leaf form. From these prices you will receive the discounts and rebates named in the "Jobbers' License Agreement," which constitute your profit.

PROFITS.

On the basis that the average Jobber buys in carload lots and sells in less than carload lots the percent of profit on the selling prices will be as follows:

Diff. between C. L. & L. C. L. Prices in Price Sheets Schedules	Discounts named in Paragraph 1 Jobbers Agreement	Discounts named in Par. 7 Jobbers Agreement	Quantity Rebates Named in Par. 8 Jobbers Agreement	Total Approximate Per cent. Profit on selling Prices
1 & 4 5½%	7½%	5%	2½%	19
			to 5%	21
2, 3, 4½ 5 & 6 } 5½%	5%	5%	2½%	17
			to 5%	19

C. L. & L. C. L. PRICES.

In order to obtain the benefit of Carload Prices, the Jobber must buy in carlots for one delivery only, except at "Jobbing Points" where manufacturers are located.

Shipments to these points will be invoiced at C. L. prices in any quantity. Less than Carload shipments to all other Jobbing Points and non-jobbing Points will be invoiced to you at the L. C. L. Prices in the sheets (All subject to the Discounts and Rebates hereinbefore named).

1 In the resale to the plumber it is not permissable to take an order for a carload and ship out in small quantities at Carload Prices. The Plumber is entitled to Carload Prices at any point only when a Carload is actually delivered to one Purchaser in one shipment and paid for as one shipment.

DELIVERIES.

From Jobbers' Stocks—Zones 1, 2, 3, 4 and 5

2 All shipments from Jobbers' Stocks to other than Jobbing Points in Zones 1, 2, 3, 4 and 5, shall be billed F.O.B. Cars Point of Shipment.

If Jobbers find it necessary on Shipments from Stock to Non-Jobbing Points to equalize with other Jobbing Points, such Equalizations shall be made on the basis of the weights given in the sheets and at the rates given in the Equalizing Freight Tariff Schedules.

From Jobbers' Stocks—Zones 6, 7, 8, 9, 10 and 11.

3 All shipments from Jobbers' Stocks to other than Jobbing Points in Zones 6, 7, 8, 9, 10 and 11 shall be billed F.O.B. cars Point of Shipment with actual freight allowed to Non-Jobbing Points.

Direct Shipments from Factory *All Zones.*

Shipments to other than Jobbing Points made direct from the factory on Jobbers orders or sales made direct to Plumbers by the Manufacturers, shall be billed at the prevailing Zone Prices plus freight charges from the nearest Jobbing Point based on the weights given in the sheets and at the rates given in the Freight Equalizing Tariff Schedule.

4 BOXING AND CRATING.

These charges will be made on all goods by the Manufacturers and must be made by all Jobbers in the Resale at the prices given in the Sheets. These prices are net (Subject to the discounts and Rebates *only* that are named in the "Jobbers License Agreement."

The same applies to charges for Drilling, Decorating and other miscellaneous items shown in the Sheets.

SALES BY JOBBERS TO OTHER JOBBERS.

Sales by one Jobber to another cannot be made at any better prices than those established in the Resale Sheets.

GUARANTEES.

The various conditions respecting Guarantees under which the ware is purchased by the Jobber shall not be varied in the Resale to the Plumber. Particular attention is called to the practice that has been established in the past of labelling Non-Guaranteed Baths with the Jobbers Guarantee label. This practice will be considered a violation of the Jobbers' License Agreement.

Additional sheets will be issued as fast as possible on items not covered in the enclosed sheets.

The discounts herein named have been complied with as much care and accuracy as would permit in the short time allotted to distributing these sheets to the jobbing trade, and you will confer a great favor by reporting promptly any apparent discrepancies or errors.

Yours truly,

(Signed) E. L. WAYMAN,

Licensor.

PETITIONER'S EXHIBIT No. 214.

Filed Nov. 23, 1910.

STANDARD SANITARY MFG. CO.
General Offices.
Pittsburgh, U. S. A.

JFC—810 4—A.

"Standard" Porcelain Enameled
Baths and Plumbing Goods.
New York Show Rooms
35-37 W. 31st St.
Jas. F. Conran, Manager.

Answered
Aug. 11, 1910.
C. S. Hirschfield.

New York, N. Y.
August 10th, 1910.

Central Plumbers Supply Company,
252 Pearl Street, City.

Gentlemen:—

I have your letter of August 9th and contents carefully noted. Beg to say that we have taken this matter up with our Order Department, but up to the present time, have not received the information, however, as soon as we do, will communicate further with you.

The writer understands your position in regard to this matter fully, but it is also his personal opinion that you ought to sign the Agreement. If the Courts decide that it is illegal the matter will be dropped and the arrangements dissolved, but there is no question in the mind of every lawyer who has examined the instrument, that it is perfectly legal, and we think the courts will so decide, but as you know, getting a decision on questions of this kind is slow work and no one would like a quick decision better than our Company, and in the meantime, we think that you ought to sign this Agreement for the good of the business in general, it will entail no hardship on you, as you are practically living up to the prices agreed on.

Yours respectfully,
STANDARD SANITARY MFG. CO.
J. F. CONRAN,
Mgr.

PETITIONER'S EXHIBIT No. 215.

Filed Nov. 23, 1910.

Design and Durability
unsurpassed.
Trade "Standard" Mark.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. Q-628102-D

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
1st Vice President.
Sales Department.

Pittsburg, U. S. A.
June 28th, 1910.

Messrs. Mayor-Lane & Co.
New York, N. Y.

Gentlemen:—

We are in receipt of your favor of the 23rd inst. answering ours of the 20th with further reference to placing your order for a number of items of Enameled Ware. We note your general remarks with reference to the same and would state that under the Resale arrangement it would be necessary for you to sign the Jobbers license agreement in order to secure licensed enameled ware. As outlined to you in our several communications there is very little difference if any in the present Resale prices and former prices applying to our Enameled Ware and we trust that after carefully considering the matter you can see your way clear to favoring us with your signature, and are,

Very truly yours,
STANDARD SANITARY MFG. CO.
H. J. G. HECKMAN.
Mgr. Quotation Department.

HJCH

Received
June 29 1910.

PETITIONER'S EXHIBIT No. 216.

Filed Nov. 23, 1910.

W. A. MYLER
Pittsburg, Pa.
New Brighton, Pa.

June 4th, 1910.

Mr. F. G. Ellis,
Mayor, Lane & Co.,
New York, N. Y.

Dear Sir:—

The re-sale arrangement for enameled ware will go into effect Monday next June 6, 1910. The special rebates which you have been enjoying from our company will then be withdrawn and I will send you as soon as possible check to cover rebates due you on goods shipped to and including Saturday June 4th. The terms upon which the manufacturers have agreed to sell to the jobbers under the new plan will be forwarded to you promptly and will, I believe from what I know, be satisfactory to you.

Thanking you for the confidential relations that have existed between us in the past, and trusting that our business relations may be equally as satisfactory in the future, beg to remain,

Yours truly,

W. A. MYLER.

Received Jun 6 1910 F. G. Ellis.

PETITIONER'S EXHIBIT No. 217.

Filed Nov. 23, 1910.

S. N. Ford, President.
D. A. Carpenter, 1st V. Prest.
R. S. Humphryes, 2nd V. Pres.
Reid Carpenter, Sect. & Treas.
T. B. McNeice, Superintendent.

THE HUMPHRYES MANUFACTURING COMPANY

Manufacturers of Hand and Power Pumps of Iron and Brass

Makers of Highest Quality of Sanitary Enameled Ware.

Cable Address
"Humphryes, Mansfield."

New York Office and Warehouse, 636-638 West 34th Street.

New York, N. Y. 6/6/10
Mansfield, Ohio, U. S. A.

Gentlemen:—

We hereby advise you of the withdrawal of all quotations on Enameled Ware.

Yours very truly,
THE HUMPHRYES MFG. CO.,
A. J. LANG,
Mgr.

Received Jun 7, 1910.
F. G. Ellis.

PETITIONER'S EXHIBIT No. 218.

Filed Nov. 23, 1910.

THE McCRUM-HOWELL CO.
Branches and Agents All Cities
General offices
Park Ave. & 41st Street
New York

"RICHMOND"
Boilers, Radiators,
Bath Tubs, Sinks,
Lavatories, Suction
Cleaners, Suds Makers,
Concealed Transom Lifts.
Stationary Vacuum Cleaners.

Boiler Plant
Norwich, Conn.
Radiator Plant
Uniontown, Pa.
Enameled Ware Plant
Uniontown, Pa.
Electric Plant
Racine, Wis.
Vacuum Cleaner Plant,
Chicago, Ill.

June 3rd, 1910.

Effective on the morning of June 6th, 1910, all prices on RICHMOND ENAMELED Iron Ware are hereby withdrawn. New prices will be furnished on application.

Yours very truly,
(Signed) HOWARD T. GATES,
Secretary.

HTG-EMT

Received Jun 6-1910
F. G. Ellis

PETITIONER'S EXHIBIT No. 219,

Filed Nov. 23, 1910.

F. H. Caldwell, President
J. J. Mahoney, General Manager.

Established 1875.

THE CAHILL IRON WORKS.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.
June 4, 1910.

To the Trade:—

Effective this date all previous quotations, discounts and net prices are withdrawn and are superseded by the price list dated June 1st, on "Licensed" Sanitary Enameled Iron Ware, which you will receive from Edwin L. Wayman, Licensor.

You will note by referring to this price list that we have changed our lists on a number of fixtures. We will advise you just what these changes are in a few days, and will also send you a sheet giving list of our plate numbers and page of price list on which each is shown.

Yours truly,

HRP/W (Signed) THE CAHILL IRON WORKS.

Received June 11 1910
F. G. Ellis

PETITIONER'S EXHIBIT No. 220.

Filed Nov. 23, 1910.

STANDARD SANITARY MFG. CO.
General Offices.
Pittsburg, U. S. A.

In reply refer to No. A-71316-D

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Theo. Ahrens, President.

Louisville, Ky. July 13, 1910.

Fleck Bros.,
Philadelphia, Pa.

Gentlemen:—

In going over the list of names sent in by Mr. E. L. Wayman, and which embraces all the jobbers who have signed the resale contract on Enameled Ware, I fail to find you among them. I regret to see that you have so far not seen fit to join with us.

We need your support, as your house is one of the largest and most influential in the business, and has always been a large buyer of Enameled Iron Ware. The plan as proposed will be of great benefit to the jobber, and will insure a satisfactory margin of profit on a line that has heretofore been fiercely competitive, and on which the profit in many instances has been cut down to almost nothing.

We will greatly appreciate your support, and hope you will send us your signed contract. I will be obliged to you if you will favor me with your views on the subject.

Awaiting your reply, I am,

Yours very truly,

THEO. AHRENS
President.

PETITIONER'S EXHIBIT No. 221.

Filed Nov. 23, 1910.

F. H. Caldwell, President Established 1875.

J. J. Mahoney, General Manager.

THE CAHILL IRON WORKS.

Eastern Branch
No. 76 W. 36th St.
New York City.

Chattanooga, Tenn. U. S. A.
August 15, 1910.

Messrs. Fleck Brothers Co.,
46 North Fifth St.,
Philadelphia, Pa.

Gentlemen:—

Yours of the 12th to hand.

We want you to understand that we want all the business we can get and it is unpleasant to us to hesitate the least bit in filling any order a reputable dealer like yourselves sends in to us.

At the same time in accepting the license we are expected to live up to the terms of same.

We note you say this order was taken prior to the time the resale arrangement went into effect. We will therefore ship the same immediately.

It will be advisable until such time as you can see your way clear to sign the jobber's license agreement to advise your salesmen not to take orders for our goods, as it will save us the embarrassment of having to decline them.

We of course do not wish you to quote us as having broken this rule—but are filling the orders on the strength of your statement that the order was taken prior to the time the resale arrangement went into effect.

Respectfully yours,
THE CAHILL IRON WORKS.
Per F. H. C.
President.

FHC/P.

PETITIONER'S EXHIBIT No. 222.

Filed Nov. 23, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. B-61109-CE

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
1st Vice President.
Sales Department.
Pittsburg, U. S. A. June 11th, 1910.

Subject—Your order B-1380,
our No. 2471-D.

Messrs. Ronalds & Johnson Co.,
New York N. Y.

Gentlemen:—

Referring to the above mentioned order dated May 31st and which reached us on June 1st, we regret to advise that the same came to hand too late to enable us to do much with it on the basis of the special low prices of May 18th. However, we are furnishing you an assorted car of tubs at those prices, invoice for which under date of June 4th you will receive shortly from our Standard Works.

As the re-sale arrangement is now operative, we would like to know if you desire us to cancel the balance of the order, B-1380, or make shipment of same at regular prices.

Yours very truly,

F. J. TORRANCE,
Per B.

FJT.

PETITIONER'S EXHIBIT No. 223.

Filed Nov. 23, 1910.

UNITED STATES SANITARY MFG. CO.

General offices
Arrott Building

Enameled Iron Baths
and
Plumbing Goods
Pittsburgh, Pa.

Works
Monaca, Pa.

June 23, 1910.

The Hotchkiss, Vail & Garrison Co.,
104 East 41st St.,
New York City, N. Y.

Gentlemen:—

We have received several orders from you lately, through our Mr. Ham, but as we have not received your signed resale agreement, we are not in a position to execute these orders, owing to the fact that our contract with Mr. E. L. Wayman, under whose patents we are now manufacturing our enameled ware, positively prohibits our accepting any orders from jobbers who have not signed the resale license agreement. We regret exceedingly to have to take this action, but have no alternative whatever in the matter as our contract with Mr. Wayman is very positive along these lines.

Trusting that you will see your way clear to shortly send us your resale agreement properly executed, as we do not wish to delay you in making shipment of any of these orders, beg to remain,

Yours very truly,
UNITED STATES SANITARY MFG. CO.
A. H. CLINE, Jr.
Secretary.

AHC-R.

PETITIONER'S EXHIBIT No. 224.

Filed Nov. 23, 1910.

UNITED STATES SANITARY MFG. CO.

General offices
Arrott Building
Pittsburgh, Pa.

Works
Monaca, Pa.

June 25, 1910.

The Hotchkiss, Vail & Garrison Co.,
New York City, N. Y.

Gentlemen:—

Yours two favors of the 24th received and carefully noted. Now, in regard to any orders that you placed with us before the 6th inst., your not signing the resale contract will, of course, have no effect on these orders as we intend to fill these just as soon as possible, as same have been entered and will be shipped just as soon as it is possible for us to get them out, as we are not trying to work any hardships on any jobber and, of course, can make no rule or contract which is retroactive. We regret exceedingly the position that you feel you are forced to take in regard to signing this resale contract and before cancelling the orders which you have asked us to cancel, which we cannot fill until we receive this resale contract, we want to state to you the Peck Bros. & Co. signed this resale contract yesterday and as we understand it, you are doing business on very similar lines to the Peck Bros. Co. in your City, and thought this might possibly influence you somewhat in signing this contract. This practically puts all of the high grade people in your City on this same basis. The J. L. Mott people have signed, Peck Bros. and the Mason Mfg. Co., also the Federal-Huber Co. We appreciate very much the business that we have been getting from your firm and we would very reluctantly cancel these orders, as we feel that we would like your support in this movement, and believe that in the long run that it is the very best thing that was ever inaugurated for the jobbers. In your case where you are getting equal or better than these prices, it seems to us that it is a great protection to you as it will keep some of the small East side jobbers who are in the habit of butting in on these good contracts of doing so in the

future. We wish that before we cancel these orders which you have sent us, that you will reconsider this matter and let us hear from you further as we believe that possibly the action that Peck Bros. have taken will influence you in your action regarding this contract.

Very truly yours,

UNITED STATES SANITARY MFG. CO.

A. H. CLINE JR.,
Secretary.

AHC-R.

PETITIONER'S EXHIBIT No. 225.

Filed Nov. 23, 1910.

June 27, 1910.

Mess. U. S. Sanitary Co.,
Pittsburg, Pa.

Gentlemen:—

Answering your of the 25th, at the hands of your Mr. Cline, would say that we regret exceedingly to be in the position which we have been placed in, but we do not feel that we can conscientiously sign this agreement where we have to adhere to your ruling on lump sum prices. We have never yet cut price of tubs, and as we do not sell bath tubs or lavatories separately, without complete trimmings, it means a complete revolution of our billing system, and an invasion of the privacy of our business to such an extent that the hardship exists, as much as you may regret its imposition. The fact that Peck Bros. & Co. have signed the resale agreement would have no bearing as far as we are concerned, if we believe we are right. They have a large jobbing trade throughout New England, where they sell all manner of plumbing supplies in competition with the other jobbers. This feature of their business is not akin to any of ours.

Very truly,

THE HOTCHKISS, VAIL & GARRISON CO.

EWH

PETITIONER'S EXHIBIT No. 226.

Filed Nov. 23, 1910.

UNITED STATES SANITARY MFG. CO.

Enameled Iron Baths and Plumbing Goods

General offices Arrott Building, Pittsburgh, Pa. Works Monaca, Pa.

July 11, 1910.

The Hotchkiss, Vail & Garrison Co.,
New York City, N. Y.

Gentlemen:

Again referring to your Mr. Hotchkiss favor of the 27th ult. in reference to your signing the resale contract, beg to state the writer presented your letter to the Committee that met with Mr. Wayman on last Friday and went into this matter in detail, but owing to the fact that J. L. Mott has agreed to cut out all bump bids and bill his enameled ware separately, the Committee did not think they could do anything in this matter at the present time. We are in hopes that this adjustment can be made later on but for the present it will be necessary for the jobber that signs the resale contract to bill all of his enameled ware separately. We did all that we could to have this matter arranged satisfactorily for you but we were turned down by the Committee for the present. We could like mighty well to see your signature to a contract as we certainly deplore the fact that we cannot ship you goods that you have ordered from us, but as stated in our former letter we have no alternative whatever as our contract with Mr. Wayman is very binding.

Trusting that you will reconsider this and go into the matter a little further and see that if you do not think on a whole this would be a benefit to you while it may be hurtful in a few cases and let us hear further from you, beg to remain,

Yours very truly,
UNITED STATES SANITARY MFG. CO.,
A. H. CLINE Jr.
Secretary.

AHC-R.

PETITIONER'S EXHIBIT No. 227.

Filed Nov. 23, 1910.

June 24, 1910.

Mess. Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

Gentlemen:—

We have not yet signed the resale license agreement, which you forwarded us, as there are many conditions about it which conflict seriously with our best interests, as we see them. We would thank you please to let us know the status of our orders placed with you after June 6th, as we have had no acknowledgment of their receipt from you. We take it that orders placed with you previous to June 6th would not be subservient to the conditions attaining after June 6th, and we would appreciate your very prompt reply to us, of our interpretation, as we must base our arrangements on your decision.

Thanking you in advance for your courtesy and expedition, we are,

Very truly,
THE HOTCHKISS, VAIL & GARRISON CO.

EWH.

PETITIONER'S EXHIBIT No. 228.

Filed Nov. 23, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. T62727U

"Standard Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
1st Vice President.
Sales Department.

Pittsburg, U. S. A. June 27, 1910.

Hotchkiss, Vail & Garrison,
New York City, N. Y.

Gentlemen:

Answering your letter per E.W.H. of June 24th, would say that we have not entered orders dated subsequent to June 4th from any Concern who has not entered into the resale agreement.

Our license from the owner of the patents and under which we act arbitrarily fixes what we should do in this matter.

I sincerely hope, for our mutual good, that you will see your way clear to sign the agreement as some two hundred fifty (250) other reputable jobbers in the United States have already signed.

Yours very truly,

FRANCIS J. TORRANCE
V. P.

FJT

Received
Jun 28 1910
The Hotchkiss, Vail &
Garrison Co.

1 PETITIONER'S EXHIBIT No. 231.

Filed Nov. 23, 1910.

STANDARD SANITARY MFG. CO.
General Offices.

In reply refer to No. T60901U

"Standard" Porcelain Enameled
Baths and Plumbing Goods
office of
Francis J. Torrance,
2 1st Vice President.
Sales Department.

Pittsburg, U. S. A. June 9, 1910.

Mr. E. E. Haff,
Of F. N. Du Bois & Co.,
New York, N. Y.

Dear Sir:—

I have just wired you relative to your order 4911. It is going to you today to New York as per my advices and you can charge back the freight.

3 I have had the packages marked with the respective names as per order.

I am anxiously awaiting your signature to the re-sale agreement. I have been busy here two whole days and up to eleven o'clock one night and ten o'clock another night, signing up these papers. I just had a message from Chicago where the Chicago and other Western jobbers held a meeting yesterday that they were a unit on the re-sale agreement and have signed and forwarded the papers. There was some slight misunderstanding or disagreement which has been explained and settled.

4 It is the best scheme I know of for regulating and making profitable the jobbing business and the only legalized method that I am aware of. I trust you will not make us wait long or embarrass us by declining orders in the future for we positively will not deviate from our rule. We entered into this agreement in good faith and the proper spirit on the theory that it was beneficial to the jobbing trade and on the positive assurance of at least 95% of our customers that they wanted such an agreement and I must

admit that the manner and volume in which the papers have come before me for signature certainly indicate the same opinion. 1

Yours very truly,

FJT

FRANCIS J. TORRANCE.

2

3

4

1 **PETITIONER'S EXHIBIT No. 232.**

Filed Nov. 23, 1910.

June 10, 1910.

Mr. Francis J. Torrance,
c/o Standard Sanitary Mfg. Co.,
Pittsburg, Pa.

Dear Mr. Torrance:—

The writer is in receipt of your favor of the 9th inst., and we wish to thank you at this time for the many favors
2 we have received from you in the past, and particularly for the favor you did us last week, in taking care of us at old price on 1300 and odd Nemo Tubs, sold on contracts, as we did not have a loss on these.

Referring to the contract which you have sent us, we would not care to sign this for several reasons. In the first place, the resale price and the rebate scheme are both distasteful to us. We have to carry our customers on new work from three to five months, and on the resale proposition we would have to sell our goods within 5% of cost, and the other two fives would be in the hands of the manu-
3 facturers for seven months, taking this much capital out of our business for a long length of time.

Also we would have no chance in competing with such people as Colwell Lead Co., who are manufacturing jobbers. We do not know what restrictions are placed on them to make them forfeit a large sum of money in case they were compelled to buy some goods from an outside manufacturer, or should they cut the resale price. Also in reference to the resale price, from past experience, we have no confidence in the jobbers in New York City maintaining this resale price absolutely.

4 Furthermore, while you give us your assurance that this entire plan is perfectly legal, at the same time we have never yet known half a dozen lawyers to agree on any one thing, and we don't want to take any chances of sending either Mr. Du Bois, who is over eighty years of age, Mr. Blauvelt or myself to Atlanta for fifteen years, more or less.

Taking the whole scheme from the start to finish, in its entirety, it is distasteful to us, so we have decided we will take the tubs which you kindly protected us on, and fill the existing contracts which we have on our books, and

practically discontinnue, for the time being, pushing the sale of enamel ware. We will lend all our efforts to pushing the sale of lead goods which we manufacture, and other lines which we may be able to handle legitimately as independent business men.

Very truly yours,

EF:M F. N. DU BOIS & Co.

Hoping our pleasant personal relations will continue as in the past, we remain,

Very truly yours,

EEH/M. F. N. DU BOIS & CO.

The Process Patents enumerated above cover substantially all the ways in which Sanitary Iron Enameled Ware may be manufactured economically and with durability and are essential to the production of Enameled Ware of the highest quality.

In view of the conditions that have heretofore prevailed in the manufacture and sale of Sanitary Iron Enameled Ware, it is believed that the value of the Patents named will be better preserved and the Trade conditions improved through standardized and co-operative methods of Manufacture and distribution and the maintenance of high quality will be enhanced by the possibility of an assured reasonable and legitimate profit to the jobber.

The terms and conditions under which the various companies have been licensed provide only a reasonable Manufacturer's Profit and it will be the aim of the licensed Manufacturers to give the ultimate consumer the benefits derived through improved manufacturing methods and equipment.

In behalf of the Licensed Manufacturers, I therefore, ask your support in the effort to better general conditions and to improve the quality of the ware, thereby increasing the use of the various products to mutual advantage.

Yours very truly,

Licensor.

[illegible]

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. [illegible]

STANDARD SANITARY MANUFACTURING COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

JUDGMENT FOR RESPONDENTS.

FILED FEBRUARY 14, 1908.

(28,004)

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY AND OTHERS.

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1

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND.

No. 17.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

2

THE STANDARD SANITARY MANUFACTURING COMPANY, AND OTHERS,
Defendants.

Pittsburgh, Pennsylvania, February 14, 1911.

Testimony on Behalf of the Defendants.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
MARSHALL A. CHRISTY, Esq.,
on behalf of the Defendants.

3

Mr. NOBLE: Counsel desires to have noted the appearance of Mr. Marshall A. Christy, as of counsel for the defendants. Counsel for defendants intend to offer a certified copy of the Arrott patent, being a certified copy of the exhibit put in evidence by the Government as Exhibit No. 134. That has not yet arrived. We will also offer a certified copy of the decree in the case of the Standard Sanitary Manufacturing Company vs. The J. L. Mott Iron Works, sustaining that patent.

4

Mr. GROSVENOR: I will note any objections which I have to the decree later on.

Mr. NOBLE: We also offer the opinions of the Circuit Court below, delivered by Judge Cross, and the opinions of the Circuit Court of Appeals in the same case, delivered by Judge Buffington.

GEORGE SHIELD, a witness produced on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Will you please state your full name, address and occupation?

A. George Shield, 515 Fifteenth Avenue, New Brighton, Pennsylvania.

Q. What is your occupation?

A. General foreman of the Enameling Department of the Dawes & Myler Works of the Standard Sanitary Manufacturing Company.

Q. For how many years have you been in the employ of the Dawes & Myler Works of the Standard Sanitary Manufacturing Company?

A. Actual employment, nineteen years; went to work for them in June, 1888, and worked until May, 1892, and was away four years, and returned, and have been working there ever since.

Q. Were you ever an enameler in those works?

A. Yes, sir.

Q. Please state for how many years you were an enameler? A. About six.

Q. Did you ever work as an enameler elsewhere?

A. No, sir.

Q. During the time you were an enameler, will you please state what kind of dredges you used to do your work?

A. A short handled dredge, in which the handle was struck with a tapper, for the purpose of vibrating the dredge to get the powder through.

Q. Were you also familiar with the use of the long handled dredge? A. I was.

Q. And have you also been familiar with the use of the Arrott dredger? A. I have.

Q. Now, Mr. Shield, I will ask you in your own way to describe each of those dredges, first the short handled dredge, second the long handled dredge, and third the pneumatic dredger or Arrott dredger.

THE WITNESS: Describe the dredge and the manner of using it?

Mr. NOBLE: Describe the dredge and the manner in which it was used.

Mr. GROSVENOR: Will you have any of those dredges here for an exhibit? 1

Mr. NOBLE: Yes, I will say in an offhand way, that I will do that. I will try to get one here later.

A. The short handled dredge was made from sheet iron —the bowl of it was made from sheet iron, and was about eight or nine inches in diameter. There was a band fitted around the bottom of it for the purpose of holding the wire mesh through which the powder was sifted. There was a band fastened to that with a socket attachment, and in that socket a wooden handle was fastened, generally a sledge handle was fastened into the socket The enameler held that on the back of his elbow, the back end rested on the back of his elbow, while the middle of the handle rested in the hollow of his hand. There was what is known as a tapper, a piece of round iron, which was curved with a place to rest the hand, and that was used to beat the dredge and cause the vibrations to sift the powder. When that was used, the man standing before the tub had to work the dredge in one hand in a horizontal movement, and at the same time keep up a vertical movement with the right hand. The left hand kept moving the dredge back and forward in a horizontal manner and the right hand worked the tapper in a vertical manner. 2 3

Q. About how long was the handle to that short handled dredge?

A. The wooden handle was about three feet; the socket was about six or eight inches.

Q. So that the total length from the edge of the sieve which contains the powder, to the end of the handle would be—

A. (Interrupting): Would be between three and a half and never over four feet.

Q. Let me ask you a question or two, to bring out what I have just understood you to say: As I understand you, the enameler held this dredge with his hand, about 30 inches or so from the end of the handle to the dredge, the end of the handle resting under the point of his elbow; is that correct? A. That is correct. 4

Q. So with the same hand which held the dredge he had to move it over the article which he was enameling?

A. Yes, sir.

Q. If he was enameling a bathtub 5 feet, 10 inches long, he had to carry that dredge in this one hand from one end of the tub to the other as he put the enamel over the various portions of the tub? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. While he was conducting that horizontal movement, carrying the dredge over the surface of the object which he was enameling, I understood you to say that with the other hand he held the metallic tapper or hammer which enclosed the handle and beat it up and down, so that as it struck the handle the sieve vibrated and the enameling powder went through the holes of the sieve? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. While by his other hand he distributed the powder over the article which he was enameling? A. Yes, sir.

Q. Now, before we go into the further question of enameling, please describe the long handled hand dredge?

A. The long handled hand dredge, the bowl was made just the same on that, in the same manner as on the short handled dredge, only it was about ten inches in diameter.

Q. The short handled one having been about how much?

A. Eight.

Q. So that there was an increase of about two inches?

A. Yes; the handle was made from seamless tube and was seven feet long from the—

BY MR. GROSVENOR:

Q. Seamless tube?

A. Yes; that is the name that we know it by, and it was seven feet long and was attached to the bowl of the dredge, being split part of the way up and then spread to fit around and about thirty inches from the bowl on that handle there was a clamp fastened there, to which was attached a chain, and that chain running up and over a pulley with a counterbalance at the other end to help sustain the dredge, and it was beat in exactly the same manner as the short handled dredge, with a tapper made from round iron with a wooden handle, and it was beat in the same manner to get the vibration, that is, to vibrate the sieve.

Q. Was the long handled dredge of which you have spoken, supported and guided in the same manner as the

short handled dredge, except for this counterweight of which you have just spoken? A. Yes. 1

Q. So that the enameler held the handle, the end of it coming under his elbow, and supported it further down on the handle by his hand?

A. Yes, sir.

Q. And guided with that same hand the dredge over the article which he was enameling as he put the enamel on that article which was being enameled? A. Yes, sir.

Q. While he was doing that, at the same time he had the same operation with the other hand, to hammer the handle to cause the sieve to vibrate, and thus make the 2 enameling powder go through; is that correct?

A. Yes, sir.

Q. Then with both the long and the short handled dredge the enameler had with one hand the support of the dredge and the guiding of the dredge over the article to be enameled, and with the other hand the hammering of the dredge, to cause the vibrations? A. Yes, sir.

Mr. GROSVENOR: I object, because it appears that in the long handled dredge was held by a chain, whereas with the short handled dredge there was no chain. 3

BY Mr. NOBLE:

Q. Your answer is correct, except that the long handled dredge had the counter-weight support; is that correct?

A. Yes, sir; and it was necessary for a man to hold it up, too.

Q. To support the weight? A. Yes, sir.

Q. So with the long handled dredge there was a counterweight assisting the man's arm; in the short handled dredge there was no support except the man's arm; is that correct? A. Yes, sir.

Q. In the long handled dredge it was partly supported 4 by this counterweight; is that correct? A. Yes, sir.

Q. Not in whole? A. No, sir.

Q. Now, give me a description of the Arrott or pneumatic dredger?

A The Arrott dredger—

Mr. GROSVENOR: Is the word "dredge" or "dredger"?

Mr. CHRISTY: In previous litigation concerning the

1 Arrott patent, it was customary to designate the hand operated dredge as a "dredge," but the automatically operated dredger is known as a "dredger."

By Mr. Noble:

Q. Now, will you please describe the Arrott automatic dredger?

A. The Arrott dredger has a bowl nine inches in diameter, as I can remember. I never measured that. The handle is four foot six inches long, to which is attached a pneumatic hammer or vibrator, which is about nine inches
2 long, making the total length from the end of the hammer to the bowl of the dredge about five foot three inches. On the hammer there is a button, which allows the air to get in the hammer for the purpose of vibrating it, and the enameler holds one hand on the hammer and the other on the handle, having both hands, the flow from the dredger, on account of the rapidity of the stroke being continuous he just simply stands in one position and moves the dredger over whatever he is making.

Q. Whatever he is enameling?

A. Whatever he is enameling.

3 Q. The Arrott dredger is used with or without counterweight?

A. On bathtubs it is used at our factory with counterweights.

Q. So that the one thing about the Arrott dredger is that the enameler has both hands which he may use to guide the dredger over the surface of the article to be enameled? A. Yes, sir.

Q. Whereas, by the old hand methods, he had to support and guide with one hand? A. Yes, sir.

Q. In the manner which you have described?

4 A. Yes, sir.

Q. Now, will you describe the fineness of the mesh as between the two types of dredges?

A. Ten meshes to the inch difference.

Q. That is to say, the Arrott dredger is ten meshes to the inch?

A. Finer; we use a fifty mesh wire on the Arrott dredger. We did use a forty on the old hand dredge.

Q. That enables you to use a finer enameling powder, does it not? A. Yes, sir.

Q. Now, was there any difficulty—going back to the old hand dredge, either with the long handle or the short handle—was there any difficulty in enameling on the surface of the article wherever you wanted to put it? 1

A. There was.

Q. Explain those difficulties, will you, please?

A. In using the tapper, it was impossible to get a continuous flow of enamel—the enamel going through in puffs, just as the dredge handle was struck; it was a hard matter to place just where you wanted it, on account of having only one arm to guide the dredge with.

Q. Now, as to the coming through in puffs, you mean that you could not get the blows fast enough? 2

A. You could not get the blows fast enough to get it continuously.

Mr. GROSVENOR: These questions are somewhat leading.

Mr. NOBLE: I realize that, but I am endeavoring to bring it out as quickly as possible.

Q. You mean the blows on the hand dredge could not be made fast enough to get a continuous flow of powder from the sieve? A. Yes, sir. 3

Q. It was in puffs? A. Yes, sir, intermittently.

Q. Following the blows of the hammer? A. Yes, sir.

Q. How about the flow that you can get from the Arrott dredger?

A. The flow from the Arrott dredger is one continuous stream.

Q. As you move the Arrott dredger over the surface of the article, then, is the enameling powder deposited equally all over the surface or not?

A. It is deposited equally all over the surface.

Q. Was that true with the hand operated dredge? 4

A. No, sir.

Q. Explain why it was not true?

A. The reason it was not true was because with the pneumatic dredger, you have a continuous vibration.

Q. That is, the blows are very, very rapid?

A. They are so rapid that it is hardly possible to realize that they are. It is one steady vibration.

Q. With the hand tapper, it was only possible for a man to tap so fast. He could not get anything near a con-

1 A. There is no question about that. That is true, and it is known by all enamelers.

Q. Will you state whether or not there is any other advantage in the enamel being put on thin, beside the one which you just mentioned, of its fusing better to the article enameled—to the iron?

A. Its durability and its being a smoother and better article all the way through.

Q. You said awhile ago that it would withstand a blow better? A. It will.

Q. As I understand you, this enamel accommodates itself
2 more to the expansion and contraction of the iron on which it is placed?

A. When the enamel is thin, there is far less chance of its leaving the iron by cause of expansion or contraction.

Q. In other words, it is more elastic?

A. Well, I don't know if it is more elastic, but when it is thin, there is not as much on there, and there is not the tendency to flake off, by reason of expansion or contraction.

Q. As I understand what you said about the hand dredge, you could not get the powder on by that method as accurately or as smoothly; is that correct?

3 A. That is correct; yes, sir.

Q. Now, comparing the enameled ware manufactured by the hand dredge, and the enameled ware manufactured by the Arrott dredger, will you please state which is the better article?

Mr. GROSVENOR: I think that question is rather too broad. Do you mean to confine yourself to a comparison between this enameled ware made today by the Standard Sanitary Manufacturing Company under the Arrott patent, and that which they made previously?

4 Mr. NOBLE: Within the experience of this witness, of course.

Mr. GROSVENOR: When he was an enameler?

Mr. NOBLE: And when he was the superintendent, too; in other words, during his experience covering his eighteen years there.

Mr. GROSVENOR: That is all right.

A. It is far superior to anything we ever made. The

ware now is far superior to anything we ever made when using the old hand dredge. 1

Q. What was the character of the surface of the enamel when you used the old hand dredge?

A. The surface of the enamel was not near as smooth as it is now.

Q. Well, as to its porous qualities?

A. The enamel, when we used the old hand dredge, was of a porous nature and did not have the finish of the enamel which we have at the present time, or have had, since using the Arrott dredger.

Q. With which dredge can you put the enamel on more quickly? A. The Arrott dredger. 2

Q. What, if any, advantages is there in that feature of the Arrott dredger in the manufacture of enameled ware?

A. It allows— It enables us to manufacture a more durable, smoother, and better article. It enables the enameler to do more work in less time with less effort to himself. We are enabled to get out a far greater production from our furnaces and our company is benefited in view of that increased production and in the better goods which we make. Our enamelers also make more money.

Q. In other words, the fact that you can put on the powder faster has these many advantages which you have mentioned? 3

A. All attributable to being able to put on the powder faster.

Q. Now, is there any advantage in point of speed in getting on the enamel with respect to the heat of the article which you are enameling, its retaining its heat after it comes out of the furnace?

A. There is a great deal of advantage in that.

Q. What is the advantage?

A. Under the old practice of using the hand dredge, an enameler got his tub or his piece of ware just as hot as ever it was possible to get it, sometimes got it hotter than he ought to, on account of the process of putting the enamel on, being so slow, and he wanted to get all the heat that he could in his casting. That is detrimental in view of the fact— 4

Q. (Interrupting): You mean this excessive heat is detrimental?

A. This excessive heat is detrimental, in view of the fact that when you subject a base or first coat to more than a

1 certain amount of heat, you tend to destroy the life or adhesiveness, the affinity between that base and the enamel on one side and the iron on the other. With the use of the Arrott dredge, the enameler today just gets his tub, or the article which he is enameling, just so that the base or first coat is nicely fused, because he knows he can get around his tub quick enough and get it back in the furnace with the enamel powder fused to it by the use of the Arrott dredger.

Q. With the old hand dredge, and also considering this excessive heat to which the tub was heated, could the enameler get around his tub or the article which he was enameling
2 with sufficient speed to get his enamel on always before the article lost its heat?

Mr. GROSVENOR: I object to that question. That is leading and—

Mr. NOBLE: Just strike it out bodily.

Mr. GROSVENOR: No, leave it as it is. Just read the question.

The stenographer then read the last question.

Mr. NOBLE: Answer the question.

A. No. Invariably the tub would become chilled before
3 he would get anything near the amount of enamel on in one dredge that he does now with the use of the Arrott dredger.

Q. You said when the hand dredge was used the casting was heated to a greater heat than it is now necessary to heat it? A. Yes, sir.

Q. Could the enameler, by the use of the hand dredge, get his powder on anything like as fast as he can with the Arrott dredge? A. No, sir.

Q. Was it feasible, in your experience and observation, for the enameler to get over the article with the hand dredge
4 before it had lost its heat?

A. He had to get over it before it lost its heat, and he had to be extremely light with his powder; he could not hardly get any powder on.

Q. Then, in order to get over it, before it lost its heat, he had to skimp on the powder; is that correct? A. Yes, sir.

Q. Have you known of instances where he did not succeed in getting over it even in that manner?

A. I have known of instances, lots of them, where he did not succeed in getting over it; lots of little things would

go wrong, and he could not get over the bathtub before it lost its heat. 1

Q. Well, just describe what you mean by little, trivial things?

A. Well, the man in turning the table might be delayed; he might be delayed for almost a minute, and then he would go on again, and if the man had started around his tub by that time, the tub would be chilled off and he would have to stop and put it in the furnace again. He might get enamel material that was a little bit coarse, and he would start on his tub, and would not have the power to force it through with his iron, couldn't beat it hard enough, and 2 he would have to stop and put the tub back in the furnace.

Q. If there were difficulties such as you have mentioned, encountered in enameling the tub, then the enameler was not able to complete his work and would have to put the tub back, and so much more time was expended in enameling it? A. Yes, sir.

Q. What effect did that have on the quality of finish gotten on the tub?

A. It has a very detrimental effect on the enamel. Take a bathtub and get one side or two-thirds of that filled with a sufficient amount of enamel, or a portion not within one- 3 quarter or one-fifth of what is on the other side, and you place that bathtub in the furnace for the purpose of fusing the enamel that is on there, and by the time the regular side is fused, the portion that has not been covered, or only slightly covered, will be destroyed, and that will cause the enameler trouble when he goes to apply his next coat; he may get it covered up or it may go to the bad when it is put in the factory or after it is sent out to the trade.

Q. In other words, it may destroy the adhesive quality?

A. Yes, sir.

Q. And when the enameler attempts to repair that dam- 4 age, and enamel over that, he may produce what is in fact a defective article?

A. He may produce an article that would primarily pass inspection at that time, but the chances are, nine times out of ten times, that article would be returned to us as defective goods.

Q. These instances which you have mentioned, were they or not of frequent or infrequent occurrence in the days when goods were enameled by hand?

A. Those things occurred frequently.

Q. Will you contrast the manufacture since you have used the Arrott dredger, covering the same ground as you have just done with the hand dredge?

A. Since we have had the pneumatic dredger or Arrott dredger introduced, and got it working in our factory, we have made better goods. We have less trouble, in view of the fact that when a man picks up the dredge to go to work, having both hands to use it—to guide it—and being able to regulate the flow of his enamel automatically and the speed with which he can perform that operation, that all tends to obviate the troubles we did have with the old hand dredge.

Q. Do they only tend to obviate those troubles, or do they obviate them?

A. I beg your pardon, they do obviate them.

Q. Suppose the enameling powder is somewhat coarse today, how can the enameler use that powder?

A. He just stops for an instant, reaches down to his side where there is a valve, turns on a little more air, and the added pressure makes it go through.

Q. In other words, it makes it hammer harder?

A. Yes, sir; makes it vibrate harder.

Q. And what did the enameler have to do with the old dredge in such case?

A. He had to pound his arm off, and after the tub was finished, would have to get better powder.

Q. Did it sometimes happen that in such cases as that he could not get the powder through by hammering?

A. Very rarely that he could not finish the tub; he might have to put on five dredges, or maybe go over it six times, to get enough on, but he would have to finish the tub or the tub would be a total loss.

Q. Whereas, by the use of the Arrott dredger, that result is obviated by the turning on of more air and getting a harder blow; is that correct? A. Yes, sir.

Q. Now, going back to the tubs, which were enameled by the hand method, how did the enameler succeed in getting the enamel on with greater smoothness than would be indicated by the intermittent deposits of the enameling powder made by the hand blows? How did he succeed in getting the surface smooth?

THE WITNESS: With the use of the old hand dredge?

MR. NOBLE: Yes.

A. It was very rare that there was a smooth tub made. 1

Q. And in an effort to make it smooth, what did he have to do?

A. After his tub came out with one dredge on, it was evident that there were blue places in it, and then it was necessary for him to put as much powder as he could on those blue places and touch as little as possible on the places where it was white. He knew that it was heavy because it was white, and he knew that it was somewhere thin, because there it was blue.

Q. State whether or not there was any danger in putting the powder on thick in one place and thin in another, in 2 getting the enameling powder to fuse properly?

A. There is always danger of that. Because where the powder is applied too thick, in fusing in the furnace it is liable to run, as we call it—just slide a little bit—and that will make a ridge or streak on the surface of the tub, and that means that that tub is no good, only for an inferior article.

Q. Then, if you got it on too thick and you put it back in the furnace, it had a tendency to melt and flow and spoil the article? A. It had a tendency to run.

Q. Whereas, with the change now, it fuses with the iron 3 at once and with the enamel which has been previously deposited; is that correct? A. Yes sir.

Q. Was there any difference in the manner or care with which the article which you were enameling had to be handled in putting it back in the furnace by the hand method and by the Arrott method?

A. There is a great deal of difference.

Q. Will you please describe what that difference was?

A. On account of the slow method, or the length of time which it took to apply the powder to a casting, under the old method the casting became chilled off. It was necessary 4 in putting the fork under the rim of the tub to put it in the furnace—it was necessary in doing that, to exercise great care, so that you could slip the fork in there without the slightest bump. In lifting it off the table, it was necessary to use great care to avoid bumping it. Then, in putting it into the furnace it was necessary to exercise great care so that you would not bump it too much in putting it down on the angle irons; if you did that, that powder not being fused to the iron, it would slip or slide down, which would

1 give you a heavy roll of powder. If a man did that before he got the tub in the furnace, and he saw it, it was necessary to put it back on the table and turn it over and take an asbestos cloth or glove and scrape that out, and then take a pair of bellows and smooth it out, and practically all of that dredge would be lost.

Q. Explain what you mean by putting the tub in the furnace, so that when the Court comes to read this testimony he can know what you mean by taking it off of the table with the fork and putting it in the furnace. Just describe how a tub is heated in the furnace and brought out and put
2 on the table; what is done with it when it is on the table, and how it is put back again.

Mr. GROSVENOR: This description is supposed to cover what time?

Mr. NOBLE: When using the hand method and when using the Arrott method.

A. In a bathtub enameling furnaces, in the centre are placed two rails or two angle irons for the purpose of raising the bottom of the bathtub up from the bottom of the furnace. The table on which the bathtub is enameled is similar, in
3 that it has small rails or angle irons to keep the tub off the table, also sides and hoods for the purpose of holding it in there—

BY Mr. GROSVENOR:

Q. You do not mean by a hood something that is held over it?

A. No, sir; it is around the rim to keep the enamel from getting on the outside of the tub. We use a fork made from two inch pipe with an iron "T" welded—

BY Mr. GROSVENOR:

4

Q. Is this a description of the way you do it today, or as you did it before you got the Arrott patent?

A. This is the way all bathtubs have always been enameled, to the best of my knowledge. The fork is made with an iron "T" welded on one end, to which is attached two movable prongs; these prongs being movable to allow us to adjust the fork to the different widths of bathtubs—that is, the prongs; these prongs are put under the rim of the bathtub, and it is then lifted by a crane—that is, the fork is hung

on the crane and the bathtub is lifted from the truck, or whatever it is setting on, and put into the furnace resting on these rails or angle irons. It is left in the furnace until the first coat or base coat is thoroughly fused. 1

Q. That is to say, when you first put the tub in cold, it has on it a base or slush coat, is that correct? A. Yes sir.

Q. And that is put on before it comes to the enameler?

A. That is put on before the enameler gets it.

Q. Now, with that slush coat on, the enameler takes it and puts it in the furnace and rests it on the angle iron or rails?

A. Yes; after the first or slush coat is properly fused, it is brought out and put on the table. 2

Q. How do you bring it out?

A. In the same manner as it is put in, by the use of that fork.

Q. And then the fork is slipped to one side?

A. It is put under the end of the tub and just dropped.

Q. Where is the tub deposited after you have taken it out of the furnace?

A. The tub is taken out of the furnace and put on the table.

Q. Now go ahead. What happens next? 3

A. Then the helper or rim dredger turns the table over to the position in which it is best suited for the enameler to dredge it at; the enameler starts and dredges the inside of the tub, while the rim man dredges the rim. After a sufficient amount of enamel has been put on that tub, the rim man holds the table up straight; they take the fork and slip it under the rim of the tub again and place it in the furnace to bring it up to a certain point of heat, which is a matter of judgment always with the enameler. That process is repeated until the piece is finished.

Q. Now, the table on which the tub rests is capable of being moved so that the tub can be put in a convenient position for the enameler to put in the enamel? 4

A. Yes; on the inside.

Q. And for the rim enameler to enamel the rim?

A. Yes, sir.

Q. That was true with the hand method? A. Yes, sir.

Q. And is also true as to the Arrott dredger?

A. Yes, sir.

Q. Can that table be tilted at different angles while the enameling is going on? A. It can.

Q. And is?

A. According to the necessity of the case with the enameler.

Q. When the enameling was being done by hand, did you have a man whose especial duty it was to turn the table?

A. Yes, sir.

Q. In enameling by air, has it been possible to develop a method whereby you could dispense with the services of that man?

A. Yes, we have developed a method where we can now use two men.

Q. Whereas formerly you sometimes used how many men? A. Three, and sometimes four.

Mr. GROSVENOR: In speaking of the hand method, you were speaking of the enameling of tubs?

THE WITNESS: The actual number of men employed in enameling one bathtub.

Mr. GROSVENOR: I don't want that confused with sinks or lavatories.

THE WITNESS: As far as my testimony has gone, I have been talking about bathtubs, even if I did not mention it each time. The manner of putting it in and bringing it out of the furnace has always been the same but the manner in which it is enameled now is different.

Q. As I understand it now, you have developed a method of operating the table, since you have had the use of the Arrott dredger; is that correct? A. Yes, sir.

Q. By that method of operating the table, you have gotten rid of the necessity of employing a man to turn the table; is that correct? A. Yes, sir.

Q. The table is now turned in what way?

A. The table is operated by mechanism controlled by a foot valve, that foot valve being controlled by the enameler himself who enamels the inside of the tub.

Q. By him putting his foot on this foot valve he can turn the table in various directions?

A. He can make it revolve around.

Q. So as to turn the tub from one end to the other?

A. So as to follow the lines where he is dredging.

Q. And he can turn it backwards and forwards? 1

A. Not the enameler; the rim man does that.

Q. The rim man can turn it backwards and forwards, and the enameler can turn it from end to end, so as to get to the inside to enamel it? A. Yes, sir.

Q. And by this device the services of one man are dispensed with? A. Yes, sir.

Mr. GROSVENOR: To which device are you referring?

THE WITNESS: The manner in which we operate our table now.

Q. Is it feasible for a man to use the hand dredge with a table operated in the manner which you have described? 2

A. No, sir.

Q. Just tell why?

A. A man using the old hand dredge, either the short or the long handled dredge, it is necessary for him to step from one side to the other, backwards and forwards, and move around to counteract the swing of the long handled dredge, or to reach places, if using the short handled dredge, that he could not get at by standing in one place. Consequently a man could not operate the foot valve—

Mr. GROSVENOR: You are talking of using two men now, are you, on a tub? 3

A. Yes, sir.

BY Mr. NOBLE:

Q. So that by the introduction of the Arrott dredger, you are able to dispense with the services of one man in enameling the tubs? A. Yes, sir.

Q. Now, going back to the matter which you described awhile ago, of getting the tub in and out of the furnace, when the enameler used the hand dredge, will you state whether the precautions which you described as being necessary then, and the accidents which you described as happening, flow from the use of the Arrott dredger? 4

Mr. GROSVENOR: I object to that question. It is too indefinite. I do not recall what accidents the witness referred to. He has described the taking of the tub out of the furnace, and he said that that was the method which has always prevailed in taking the tub out and putting the tub in the furnace.

1 By Mr. Noble:

Q. Well, Mr. Shield, will you again, for the enlightenment of my brother, state the precautions that had to be used in putting the tub into the furnace, and in handling the tub, or the article to be enameled, when the method of enameling was the old hand method.

Mr. Grosvenor: Do you mean precautions which do not have to be observed today?

Mr. Noble: No. I will get this description in first, however.

2 A. When we used the old hand dredge it was a slow process, and for that reason the tub lost its heat and got comparatively cool before the enameler was able to finish his dredge or his coat, and that enameling powder was not fused into the iron, and a good deal of it was just hanging there loose. It was not a solid body. In putting the fork under the rim of the tub, it was necessary for him to exercise great care. If he bumped it during that operation, the chances were that he would shake the powder from the side of the tub down into the bottom; or in moving it from the table if he bumped it, he would have the same results, knock 3 the powder off, or a portion of it off. Then, in putting it in the furnace on the angle irons, if he got any kind of a bump, it would result in the powder sliding off the side of the tub down into the bottom. If he bumped the tub before it went into the furnace and he knew it, he would have to turn that tub onto its side and take an asbestos glove or rag and sweep that powder down, and then take a pair of bellows and blow out the powder so that it would be clean. That is the reason that we had to exercise so much care; it was on account of the casting being cold and the enamel not being thoroughly fused to the iron when it went into the 4 furnace.

Q. In other words, if I understand you, by the hand process, he could not get his enamel on smoothly or rapidly. The tub or article being enameled cooled? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. As a result of its cooling, when the enamel came in contact with the iron, or the enamel which was previously deposited, because of that cooling it did not fuse but merely hung there? A. Yes, sir.

Q. And because of that these precautions were necessary? 1
A. Yes, sir, and the accidents happened which you described? A. Yes, sir.

Q. On the introduction of the Arrott dredger, was it possible, and was it the experience that you could get the enamel on the tub faster, and that consequently it fused when it was deposited?

A. By the use of the Arrott dredge, as we use it today—

Q. (Interrupting): That is upon its introduction and since then?

A. Yes, it is possible for a man to distribute his powder, his enameling material, on there fast enough, go twice 2
around the tub and get enough on there so that when the tub is lifted up and the fork is put under there, the enameler just lifts up the fork and all that he has to look out for is so that he does not strike one of those tines on the end of the tub; he puts his fork under it and shoots it right into the furnace. It would be impossible to shake or bump any of the enamel off of the tub as we do it today.

Q. You said that the enamel, after being put on the tub, when you used the hand method, was porous. Would it be proper to describe it as an eggshell surface?

Mr. GROSVENOR: Objected to as leading. 3

A. That is what it was known as. It was described that way.

Q. That was the trade description or shop description?

A. That is the shop description, enameled with an eggshell finish, as we know it today.

BY Mr. GROSVENOR:

Q. Are you talking of the porous condition when it is put on, or after it is put on the tub?

A. The porous condition after the tub is finished. 4

Mr. GROSVENOR: Mr. Noble's question was directed to the condition of the powder in the sieve, if my recollection is correct. Will you read the question?

The question referred to was then read by the stenographer.

Q. What was the shop description of the finished enamel product when you used the hand method?

A. In speaking of the enamel we spoke of it as being porous, and as having an egg-shell finish; that was the common language used among the enamelers.

Q. Compare that finish which you have just described with the finish of the article which you got after the introduction of the Arrott patent.

A. The finish today is a hard, solid finish with a high lustrous finish to it.

Q. Is it porous? A. No, sir.

Q. Then does it or not collect as much dirt as it formerly did when it had the porous finish? A. No, sir.

Q. In other words, it is more sanitary?

A. What dirt it collects now is easily wiped off.

Q. And formerly—

A. It showed in those fine pores. Those pores were extremely fine, but they were there.

Q. Describe the tub or article which you are going to enamel in point in heat; what does it look like?

A. It is a bright, cherry red; a very bright, cherry red.

Q. Do you know approximately how many degrees Fahrenheit the tub is when it comes out of the furnace?

A. It is conceded among the enamelers that 1500 degrees is about the correct heat.

Q. Will you now describe the effect of the heat upon the enameler, upon the way in which he had to do his work when you used the hand process, first taking the short hand dredge and then the long hand dredge?

A. When we first used the short hand dredge—

By Mr. GROSVENOR:

Q. The short hand dredge was only used for the rim, wasn't it?

A. That was the first dredge ever used for the purpose of enameling bathtubs. The long handled dredge was an evolution of that.

Q. An evolution before the using of the Arrott patent?

A. Yes, sir; when the short hand dredge was used it was necessary for a man to hold in his mouth or by means of his teeth a mask, two asbestos gloves on his hands and his jacket, both arms and breast were covered with asbestos, and it was necessary for him to use a very heavy canvas apron because he had to get so close to the tub and stay there so long, because it was necessary to get the tub so hot

in the beginning that it would set fire to average clothes. 1
Q. And what effect did that have on the men?

Mr. GROSVENOR: I object to that because the witness has testified that the long handled dredge was a development from the short handled dredge. Were they both in use at the time of the invention of the Arrott patent?

Mr. NOBLE: Counsel for defendants has no objection to counsel for the government examining the witness at length on cross examination, but counsel will state that the short handled dredge will be shown to have been in use until the invention of the Arrott 2
dredge and was in use until recently in many shops. The long handled dredge was developed in the work of Dawes & Myler and was developed by Mr. Shield.

Mr. GROSVENOR: All right, then we will go on.

Mr. NOBLE: What was the question?

The last question was then read by the stenographer.

A. It was very exhausting work, and a great many men were not physically able to stand it. It was necessary in those times for a man, after he had enameled one tub, to go 3
outside and remove that extra clothing and sit down on a bench or a chair for some time until he could recuperate.

Q. Was that effect the same throughout the year, or was the effect which you have described greater during the summer?

A. The effect was considerably greater in the summer time. Part of the time we could not run our furnaces in the summer time, because the heat played them out.

Q. Now, let us pass to the long handled dredge and will you describe its evolution and the effect of it in respect to heat? 4

A. The long handled dredge was introduced for the purpose of removing the men from the extreme heat and to lighten, as far as it would be possible, the weight which a man would have to carry in holding a dredge full of powder, and it was conceded to be a very material improvement over the short handled dredge.

Q. Then, it had two improvements, one in that it enabled the men to stand further away from the hot iron which was being enameled— A. Yes, sir.

1 Q. And, second, it relieved some of the load, by the use of the counterweight, which he carried and which he had to guide over the ware which he was enameling? A. Yes, sir.

Q. What was the weight which an enameler had to carry with the short handled dredge, on the arm, as you have described it?

Mr. GROSVENOR: I object again, because it does not appear that the short handled dredge is the only dredge that can be used if one does not use the Arrott dredger. In other words, the fact that the dredge employed at the beginning of the art was unsatisfactory, as you
2 say, is no evidence that the Arrott dredger is the only dredge which one can use. That is evident by the fact that the short handled dredge does not have to be used because they used the long handled dredge after the short handled dredge.

Mr. NOBLE: Will you read the question.

The stenographer then read the last question.

A. From six to eight pounds.

Q. That is to say the powder which was put in the dredge weighed from six to eight pounds?

3 A. Yes, sir; to the best of my recollection. I never weighed it. I am surmising that, knowing about how much bulk there is to eight pounds of powder.

Q. And that is your best recollection? A. Yes, sir.

Q. What was the weight of the dredge itself without the powder in it, according to your best recollection?

A. About two pounds or two and a half.

Q. So that the enameler had to support in his one hand and guide over the article being enameled a weight of from eight and a half to ten and a half or eleven pounds, is that correct? A. From eight to ten pounds.

4 Q. Now, when in your factory you developed the long handled dredge, can you state approximately how much support was afforded to the enameler by the counterweight which you have described?

Mr. GROSVENOR: You are describing the long handled dredge as it was used at the time you abandoned it, or when?

THE WITNESS: At the time when it was in use?

Mr. GROSVENOR: By you.

THE WITNESS: By our work; yes, sir.

BY MR. NOBLE: 1

Q. Between what years did you use the short handled dredge in your work in the Dawes & Myler works, approximately?

A. As near as I can remember we used the short handled dredge from the beginning of that factory, which was in 1887, up until about '91 and '92, to the best of my knowledge.

Q. And then from '91 or '92 down to the time the Arrott dredge was introduced, you used the long handled dredge which you have described? A. Yes, sir.

Examination Suspended. 2

At this point, a recess was taken until 2 o'clock.

After Recess.

GEORGE SHIELD, resumed the stand for continuation of direct examination, and testified as follows:

DIRECT EXAMINATION BY MR. NOBLE (continued):

Q. Now, Mr. Shield, will you describe the use of the long handled dredge, and the effect of the heat upon the workmen in its use? 3

A. The effect of the heat upon the enameler by the use of the long handled dredge was very materially reduced. He was not bothered a great deal with the heat by using the long handled dredge.

Q. Then, when the Arrott dredger was introduced, the same state of facts was true as to that dredger, as to the heat on the men? A. Very largely; yes, sir.

Q. By reason of the length of the handle—

A. (Interrupting): Yes, sir. 4

Q. Were the men exposed to the heat a shorter or longer time when they used the short handled dredge than when they used the Arrott dredge?

THE WITNESS: I don't quite understand you.

Q. Were the enamelers exposed to the heat of the article to be enameled for a longer or a shorter time when they used the short handled dredge than after the introduction of the Arrott dredger?

1 A. They were exposed to the heat a good deal longer.

Q. And, of course, with the long handled dredge they were exposed to the heat longer or shorter than with the Arrott dredge?

A. A longer time when using the long handled dredge than when using the Arrott dredge.

Q. What effect, if any, was had upon the weight of the castings, by reason of the fact that upon the introduction of the Arrott dredge the enameling powder could be put on faster, as you have testified?

A. The weight of our castings was reduced, as near as I
2 can remember, about from 30 to 50 pounds, although I am not positive as to just the exact weight but I know they were very materially reduced.

Q. Why was that possible?

A. Because you could get at them and dredge them quicker while the light casting still retained its heat. It is necessary to have a heavy casting—that is, after we got the Arrott dredger, we found that we could apply the enamel a good deal quicker, and consequently we could fuse it on the tub in less time, and it was not necessary to put so much iron in the castings.

3 Q. Will you tell me which dredge was the harder to learn the use of?

A. The short handled, handtapped dredge and the long handled dredge were both very much harder to learn to manipulate than the Arrott dredger.

Q. Could most any workman learn to use the hand dredge?

A. No, we found a great deal of trouble in breaking in men to use either one of the hand dredges; I do not think we learned half the men that started with the old hand dredge. They were either not physically able to handle it—

4 BY Mr. GROSVENOR:

Q. Are you speaking of the short handled dredge?

A. No, both dredges; in many cases the men were not able to stand up to it, and some men apparently never could get the knack of using one hand in one manner and another in another manner, and never could master it.

BY MR. NOBLE:

Q. So that you had difficulty in getting men who could learn to use the hand dredge?

A. We had a good deal of trouble, changing and trying men all the time; men were coming and going all the time.

Q. Describe some of the difficulties which they encountered?

A. Well, it took considerable knack. It took a bright man and a man who could adapt himself to that manner of work, and it took a strong man. I do not mean necessarily a large man physically, but a strong man. And it took a man with considerable stamina. Our difficulty was that a good many of them did not have the necessary staying qualities to stay long enough to learn it.

Q. Describe the effect upon the arms or wrists of using either the short handled or the long handled hand dredge?

A. Well, with the short handled dredge, the wrist would play out in here (indicating), because a man had to carry his hand in this manner, letting the dredge rest here (indicating).

Q. You are referring to the wrist of the arm in which the enameler held the dredge?

A. Yes, sir; carried the dredge.

MR. GROSVENOR: I think I must object to that question as to the short handled dredge, because the witness testified it was abandoned seven or eight years ago, before the introduction of the Arrott patent. It is immaterial and simply colors the testimony.

MR. NOBLE: Counsel for defendants replies that the short handled dredge was in general use throughout the manufacturing plants of the country when the Arrott dredger was introduced, and has been for some years since the Arrott dredger was introduced.

MR. GROSVENOR: But this witness has been testifying as to the manner in vogue at this particular factory.

BY MR. NOBLE:

Q. May I ask whether or not what you say applies to both the short handled and the long handled dredge?

A. It does.

Q. What was the effect you were describing upon the

wrist and hand and arm in which the enameler held the dredge?

A. Unless a man was extremely strong in the wrist in which he held his dredge, his wrist swelled up; several men I have known had to give up the enameling practice; we could not learn them; their wrists were not strong enough to carry the weight of the dredge with the powder in it.

Q. Did you or any men that you ever knew, complain of the effect on the wrists or of any other difficulties?

A. I don't know positively of any specific person, but I know that it was a general complaint among the men about their wrists or arms playing out.

Q. Take the other arm, the one with which you did the hammering?

A. There were times when even a seasoned man, a man who had been working at it for some time, would have to cease for a minute or two to rest his arm; his arm would play out, and it was a hard physical strain all the time that you were beating with the tapper.

Q. And in between the enameling of the tub, the man would have to stop and rest?

A. Yes, sir; and go outside to recuperate from the effects of the work.

Q. With which dredge, the hand dredge or the automatic dredger, could you put the enameling powder on more accurately? A. With the Arrott dredger.

Q. Please explain the reasons why that is true.

A. Well, your mind and all your energies are practically concentrated on that one operation. You have both hands to use the Arrott dredger with, to guide it, and your hands are just fixed on the handle of it and the hammer, you have just got your mind fixed on the one operation, whereas previous to that you had to watch your dredge so that it would not swing away from you, or hold it down, whichever it was, and then with the other hand you had to beat it. So you can put the enamel on better with the—

Q. (Interrupting): With the Arrott dredger.

A. Yes, sir; because the enamel comes through with a steady flow. With the other method it was intermittent. No matter how expert a man was, it was always intermittent.

Q. Now, with which dredge were you able to make the most money?

A. The enamelers today make more than twice as much money in the same length of time as they did with the old dredge. 1

Q. Is that due to the introduction of the Arrott dredger?

A. Very largely; very largely; it enables the enameler to do his work quicker, to do it with less effort to himself, to get away from the heat quicker, and with less liability of having the powder fall down while he is working; he can go on the jump now, using the Arrott dredger, whereas before he had to be so cautious not to bump his article, and that took up a great deal of time. I think the prices now are just about the same. 2

Q. Take a high-class tub: How many high class bathtubs could a man enamel in the old way by the hand process, upon a turn of the number of hours that they then used?

Mr. GROSVENOR: I object to the question, unless it is confined to the process used by the Standard Sanitary Manufacturing Company works. You mean to so confine it to the Dawes & Myler works?

Mr. NOBLE: Yes.

A. They then worked ten hours a day and twelve at night. With high grade tubs, they enameled from six to eight of what we call high grade tubs, in ten hours. 3

Q. Since the introduction of the Arrott dredger, how many high grade tubs do the enamelers turn out in the turns that have been in vogue, since the introduction of that Arrott dredger?

A. Part of the time we worked six hours and part of the time eight. In the six hour turn, they will make from ten to twelve high grade tubs.

Q. And in the eight hour turn?

A. In the eight hour turn they will make from twelve up to fourteen. 4

Q. That is class for class? A. That is high grade tubs.

Q. Of the same class that they made with the hand dredge? A. Yes, sir.

Q. Let us take what are called in the trade "competition tubs"; how many tubs did the enamelers make in a turn as then in vogue by the hand process?

A. We did not make that grade at that time, Mr. Noble, the guaranteed.

Q. Then, take the guaranteed tubs?

Q. Is that the only change that you recall, besides the change in the dredge?

A. Well, we made a change in the manner in which our enamelers get their powder.

Q. That is, from the powder boy to the dummy?

A. We used to have a powder boy who was supposed to be there with a scoupful of powder ready to dump it into the enameler's dredge; now we have the dummy.

Q. So then the change in wages to which you have testified is, in your opinion, due chiefly to what?

A. To the facility with which the men are able to produce the tubs and to the reduction in loss in the use of the Arrott dredger.

Q. You say the "reduction of loss"; what do you mean by that?

A. All bathtubs and sanitary enameled ware, after the enameler makes them, are loaded on a truck and taken to the packing room, and at the entrance to that room they are subjected to a rigid examination under an extremely strong light, for the purpose of showing any defects in the tubs, such as specks of dirt, rough surfaces or what is known in the trade as pin-holes; the color of the enamel, the smoothness of it, and the absence of pin-holes; if the inspector finds any of these, the tubs are either degraded to a lower grade, or they are sent out again to be chipped off.

Q. With which dredge was there the greater loss, the hand dredge or the Arrott dredger?

A. The loss since we have been using the Arrott dredger has been materially reduced from what it was at that time.

Q. From when?

A. From when we were using the hand dredge.

Q. Let me ask you another question: Is the inspection which you have made since the introduction of the Arrott dredger, in looking for defects in the enameled ware, as great as, or more severe, or more exacting, than it was hand dredge or the Arrott dredger?

A. The inspection of all cast iron sanitary enameled ware today—it is inspected more than 100 per cent. closer than it was. The trade has been educated up to the fact, and they demand perfection, as near as it is possible to get it in cast iron enameled goods. The inspection of bath-

tubs today is closer and more rigid by the trade than I have ever known it since I saw the first tub made. 1

Q. Then, if the inspection had been as strict and as exacting as it is today, when applied to the enameled ware which you made formerly by hand, would there have been any greater loss at that time than you have mentioned?

A. The loss certainly would have been greater with the inspection closer; that is, as it is today.

Q. In other words, under the inspection as they then had it, articles passed which, under the inspection as you have it today, would be rejected.

Mr. GROSVENOR: Objected to as leading. 2

A. That is right.

Q. I have corectly described your testimony in my question.

A. Yes, sir.

Q. I understood you to say some time ago that this air operated table, which is one of the changes which you mentioned in connection with the greater output of sanitary enameled ironware, that the use of that would not have been possible with the old hand dredge. That is correct, is it not? A. Yes, sir. 3

Q. How about the utilization of the furnace? By which method was the use of the furnace made the greater part of the time?

A. The furnace today, at the present time, is kept occupied practically all of the time.

Q. How about the days when they enameled by hand?

A. A man had to raise his door and let his furnace stand idle for the purpose of going outside to recuperate a little; he did not have a tub in there.

Q. Was the man ahead of the furnace, or the furnace ahead of the man? 4

Mr. GROSVENOR: Objected to as being immaterial, irrelevant and incompetent.

A. The furnace was generally ahead of the man.

Q. What is the situation today?

A. The man can keep up to the furnace today.

Q. So with the use of the Arrott dredger you get a more continuous use of the furnace; is that correct?

A. Get a more continuous use of the furnace; yes, sir.

1 Q. Will you give us your best recollection of the rejections or losses that were had, due to defective enameling at the time when they used the hand dredges? How many tubs would a man lose by reason of defective enameling upon inspection?

A. A man enameling at that time—

Mr. GROSVENOR: At which time?

THE WITNESS: At the time of the hand dredges.

Mr. GROSVENOR: The long or the short handled dredges?

THE WITNESS: Well, the long handled dredges—at
2 the time we used the long handled dredges, the enamelers' loss, to the best of my recollection would run from 8 to 10 per cent.; that would be the loss on bathtubs.

Q. For that same class of tubs today, or since the introduction and use of the Arrott dredger, what is the percentage of loss, as near as you can state it?

A. Our loss during the past year in our enameling department, was a trifle under 3 per cent., taking the year 1910.

3 Q. Can you attribute that to any particular cause, and if so, what?

A. I attribute our success to the men being able to apply their powder quickly, get the enamel on the tub and get it fused and get the tub in the furnace quick and get it out. It is an acknowledged fact, among all enamelers, that the quicker you can start at a piece after it comes out of a furnace, the quicker you can apply your enameling material and get it in again, the better work you can do and the less loss you will have.

Q. And that result is brought about by what?

4 A. By the use of the present pneumatic dredger.

Q. Now, with which dredge did the enameler use the greater amount of enameling powder?

A. I have no figures for that question, but I know just as a matter of general experience that we use less enamel today than we did at that time.

Q. Do you make any tubs now since the introduction of the Arrott dredger which are larger than the tubs which you made previous to that time? A. Yes, sir.

Q. How much do those tubs which you now make, the largest ones, weigh? What is the weight of the cast iron tubs? 1

A. I think what we designate as our 6 foot Luxor weighs very close to 400 pounds, 375, or somewhere along there; I don't remember the weights of our bathtubs particularly, because we have such an enormous line.

Q. Take the Luxor; you say that weighs close to 400 pounds? A. Yes, sir, to the best of my knowledge.

Q. What have you to say as to the ability of a man, by the hand dredge, to stand that heat and enamel such a tub?

A. We haven't got any men at the present time who would do it. 2

By Mr. Grosvenor:

Q. Have you asked any of them?

A. Yes, sir.

Mr. Grosvenor: I object to it—

By Mr. Noble:

Q. Why, what is the difficulty about it?

A. It is extremely large; it is over 6 feet in length; it has a five inch rim to it, and it is a big, heavy, massive tub, and it is hot—particularly hot when it comes out of the furnace, on account of there being so much iron in it, and the high quality which is demanded of a tub of that grade— 3

Q. Do you mean the high quality of enamel?

A. Yes, sir; I know a man could not make those tubs successfully with the hand dredge.

Q. Do your men make those tubs commonly with the Arrott dredger?

A. Yes, sir; the men that make the tubs make anything from a 4½ foot to a 6 foot tub that comes to them. 4

Q. Then it is a matter of regular routine? A. Yes, sir.

Q. When you said a man could not make one of those tubs with the hand dredge, did you include both the long and the short handled dredge?

A. A man could not make one of those tubs successfully with either the short or the long handled dredge.

Q. Mr. Shield, have you kept a record of the last two weeks in January, 1911, of the number of tubs enameled in the Dawes & Myler works?

1 A. That information is compiled for my benefit along with the manager, and it is compiled from the men's daily time sheets by the paymaster's department, and handed to me twice a month, sometimes monthly, at the time of each pay, or as soon after that as possible.

Q. And that is kept by the men in the ordinary course of their duties? A. Yes, sir.

Q. Can you state how many tubs were enameled during the period commencing January 16th and ending January 31, 1911?

A. No, I could not answer that question accurately.

2 Q. I will show you this paper and will ask you if you can do it?

A. (Referring to paper): Commencing January 16, up to and including January 31, we enameled 2,528 tubs.

Q. What was the per cent. of loss on those tubs, due to all causes?

A. The per cent. of loss was 1-1/10 per cent.

Q. I observe on this tabulation the names of six men, who apparently made no losses.

A. These six men had no losses during that period.

Q. These men were all enamelers?

3 A. Those men are all bathtub enamelers.

Q. This is a record relating only to bathtubs?

A. Yes, sir; that applies only to the bathtubs and to no other department.

Mr. NOBLE: Mr. Stenographer, mark that as Exhibit No. 23, for identification, offered by the defendants.

Paper referred to was then marked and filed as Exhibit No. 23 for identification, offered by the defendants.

BY MR. NOBLE:

4 Q. I omitted to ask you which dredge the men could more easily learn to handle?

A. The pneumatic, the Arrott dredger.

Q. Now, take one hundred men, so as to illustrate: What would be your estimate from your experience, as to the number of men you could get to use the hand method out of that one hundred, and the number you could get to use the automatic method, based upon your experience?

Mr. GROSVENOR: Does that mean one hundred men

working around the enameling factory, or one hundred apprentices, or what? 1

Mr. NOBLE: One hundred men that come and apply for a position—men who are anxious to learn.

A. We would not get 50 per cent, of them that would make enamelers.

Q. By which method? A. By the hand dredge.

Q. How many would you get of the same men, based upon your experience to use the automatic dredger?

Mr. GROSVENOR: I object to all this line of questioning. It is all imaginary and hypothetical. 2

A. I think we would get at least 80 per cent. of men whom we could learn to use the Arrott dredger.

Q. Now, please state what your experience is in picking out men for both methods?

A. My experience during the time I was foreman of the Dawes & Myler Works, while the old hand dredges were in use, is that I had a great deal of trouble to keep the furnaces manned. I was continually getting men, putting them on as helpers and working them up to the point where they were second dredgers, and when I come to put them inside—to make the tubs—either they had not the ability 3 to do it, or they had not the backbone to stand up to it, or they were physically unable to do it.

Q. How about the automatic dredge?

A. I have considerable trouble when I have a vacancy on a furnace, as to which helper I am going to give the position to. They all want the position. I do not have any trouble learning the men how to manage that. They seem to pick it up with very little trouble.

Q. In your experience with the automatic dredger, of the men who become enamelers, do they stick at their work or leave frequently? 4

A. Very frequently that we have the men leave.

Q. Very frequently or infrequently?

A. Very infrequently that we have a man leave. We very seldom have a man leave our works as an enameler. I only remember one case of a man leaving our employ in the last two years.

Q. What was your observation and experience during the period you used the hand dredge, with respect to the same matter?

1 Mr. GROSVENOR: You cannot refer indefinitely to the hand dredge, when the evidence shows that there were two kinds, and that they differ in workmanship and form?

Mr. NOBLE: Please state it as to both the short handled and the long handled hand dredges.

Mr. GROSVENOR: I still object.

A. We were continually losing men on account of the men's arms playing out, and the work being too hard for them.

Q. Does your answer apply to the short handled dredge
2 or to the long handled dredge? A. It applies to both.

Q. With which dredge, the automatic or the hand dredges, can you put on a thinner coat ef enamel on a tub and have it come up to standard?

A. With the automatic dredger.

Mr. NOBLE: That is all, Mr. Grosvenor.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. What position do you have?

A. I am general foreman of the enameling Department
3 of the Dawes & Myler Works of the Standard Sanitary Manufacturing Company, at New Brighton.

Q. How long have you been with that Company?

A. Went with them in June, 1888, and worked with them continuously until May, 1902,—

Q. 1902?

A. Yes, and was away almost four years and then came back and worked from 1906 continuously.

Q. You were away from 1902 to 1906? A. Yes, sir.

Q. Were you a boy when you went there?

A. I was a young man less than 21.

4 Q. How did you start with them?

A. Coating, putting a base coat on these small Massilon kettles or cooking pots.

Q. You started in as an enameler of cooking pots?

A. No, sir, putting the base coat on; I started in at the bottom rung of the business.

Q. You started in at the bottom rung of the business?

A. Yes, sir.

Q. When you were enameling these cooking utensils,

the instrument was given you, and you applied the slush to it? A. Yes, sir. 1

Q. When did you start in on bath tubs or sinks?

A. I enameled kettles and pump cylinders for one year; I was a slusher for at least six months.

Q. A slusher of what?

A. Of kettles and pump cylinders.

Q. You did not make the slush, did you? A. No, sir.

Q. It was given to you and you applied it? A. Yes, sir.

Q. How long did you do that? A. For six months.

Q. Then what?

A. Then I went to enameling the kettles and pump cylinders. 2

Q. Still on the kettles? A. Yes, sir.

Q. And you had then the powder instead of the slush, to put on? A. Yes, sir.

Q. Did you make the powder? A. No, sir.

Q. You applied it just as it was given to you?

A. Yes, sir.

Q. When did you start in to enamel tubs and lavatories?

A. To the best of my knowledge, I worked there a year and a half when I started to enamel lavatories. 3

Q. That would be about what time; that is, just give it to us approximately. I know we cannot remember these dates exactly.

A. About 1890; that is approximately.

Q. Then your position was that of enameler; that is, of putting the powder on? A. Yes, sir.

Q. You did not make the powder? A. No, sir.

Q. You did not have any connection with any other part of the factory at this time? A. No, sir.

Q. Well, how long did you do that?

A. I made lavatories for about a year. 4

Q. Then what? A. I started on bath tubs.

Q. Were you made an enameler or a rim man?

A. They started me in as an enameler.

Q. Was that with the short-handled dredge?

A. Yes, sir.

Q. That was before the long-handled dredge had been made? A. Yes, sir.

Q. And how long did you do that?

A. I judge about three years.

Q. Three years?

A. I think so, as near as I can remember.

Q. You were not the foreman then? A. No, sir.

Q. Did you devise this long handled dredge?

A. Yes, sir.

Q. You haven't got one of those here?

A. No, sir; there is one laying around the factory yet.

Q. Can you bring that along to-morrow? A. I can.

Q. Will you do so? A. Yes, sir.

Q. Now, after using the short-handled dredge for three years, you started in on the long-handled dredge?

A. I was foreman at that time.

Q. Did you ever use the long-handled dredge?

A. I had to instruct the men in its use.

Q. Did you ever apply it yourself?

A. I applied it, but not steadily; not for any length of time. I have gone in and found a man not able to finish his work, and I have finished it for him.

Q. That was after you were the foreman? A. Yes, sir.

Q. Your duty, then, was to look after the other men who did the enameling? A. Yes, sir.

Q. Is that what you do to-day? A. Yes, sir.

Q. How many years have you been foreman?

A. I judge about 11 or 12 years.

Q. During the time that you have been foreman, have your duties been confined to the overseeing of these enamelers? A. Very largely.

Q. How large a plant have you at New Brighton? How many men have you?

Mr. NOBLE: How many enamelers, or how many employees?

Mr. GROSVENOR: No, how many employees have you?

A. I think we have between ten and twelve hundred men; that is, at the time when our factory is being run full.

Q. These men are divided into several different departments, aren't they? A. Yes, sir.

Q. What is the first department?

A. The first department is the pattern department; then the foundry department, then the cleaning department; then the enameling department, and then the packing or assembling department.

Q. Take the enameling department; does that include the making of the powder? A. No, sir. 1

Q. Or the making of the slush? A. No, sir.

Q. You have omitted that in your description of the departments?

A. Yes, sir; that is in the mill room or chemical department; that is where the material is melted or ground.

Q. And your duties do not take you into that department? A. No, sir.

Q. There are chemists out there who have charge of that?

A. They have a mixer who has charge of that. 2

Q. He is a chemist, is he not? A. No, I don't think so.

Q. Well, what is his name? A. V. A.—

Mr. NOBLE: I object to that.

THE WITNESS: Mr. McKinney.

Q. V. A. McKinney? A. No, sir; H. McKinney.

Q. Well, he is the mixer there? A. Yes, sir.

Q. Now, who is the superintendent?

A. John F. Whitehead.

Q. Who is the assistant superintendent?

A. We haven't any. 3

Q. Has Mr. Whitehead charge of all these different departments, the enameling and the mixing and all the others? A. No, sir.

Q. What has he charge of?

A. The mechanical end of the factory and the pattern department.

Q. Has he charge of the foundry department for making the molten iron? A. No, sir.

Q. Who has? A. Mr. Christian.

Q. What position has he? A. Foundry foreman.

Q. He has the making of the iron, which is melted or made and poured in through the molds to make the castings? 4

Mr. NOBLE: I object to this line of cross examination.

Mr. GROSVENOR: You called the witness to show that the use of this Arrott patent in his judgment, is essential in the making of the enameled ware. It is certainly proper for the Government to show what position the witness holds in that factory, and to

1 show what other processes are used, and their connection with the use of this dredger.

Mr. NOBLE: Well, I object to it.

Mr. GROSVENOR: Answer the question.

A. Yes, sir.

Q. Do you have anything to do with the making of the casting? A. No, sir.

Q. Do you have anything to do with the selection of the quality of the iron which goes into the making of the casting? A. No, sir.

Q. Do you have anything to do with the making of the
2 pattern; by that I mean the article or object upon which the sand—

A. (Interrupting): If there are any patterns or any castings made from a certain pattern, that comes to the enameling department, and on account of the shape of that pattern, it is not properly made, so that it will enamel successfully, then I raise objections to that and have it altered; that is as far as I go.

Q. That is when it comes to you?

A. Yes, sir;—when it comes to me.

Q. If it is chipped or knocked and the surface is not
3 properly polished, then you reject it? A. Yes, sir.

Q. But up until that moment, you have nothing to do with it; is that right?

A. Well, I have general supervision of our cleaning department too.

Q. The cleaning department is the department that takes the casting after it comes from the mold, is that right? A. Yes, sir.

Q. The rough casting is ground down by emery wheels?

A. Yes, sir; when necessary.

Q. And by sand blasts? A. Yes, sir.

4 Q. And files? A. Yes, sir.

Q. And small wheels? A. Yes, sir.

Q. And that is all under you? A. Yes, sir.

Q. That is all done after the iron has been made?

A. Yes, sir; after the mold has been made.

Q. After the casting has been made? A. Yes, sir.

Q. Do you have anything to do with the making of the casting? A. No, sir.

Q. Have you anything to do with the pig iron that goes into the casting? A. No, sir.

Q. In other words; the cupola is outside of your jurisdiction? A. Yes, sir. 1

Q. And everything which pertains thereto? A. Yes, sir.

Q. Now, taking up the slush and the enameling powder; those are different, aren't they? A. Yes, sir.

Q. Do you put on the slush in powder or liquid form?

A. Liquid.

Q. The powder, of course, is dry? A. Yes, sir.

Q. The slush is put on like calcimine or like paint?

A. In our factory it is poured on.

Q. How do you make it even; with the brush?

A. It runs even. 2

Q. What sort of an instrument do you use?

A. A dipper.

Q. Just throw it on? A. Pour it on.

Q. You have charge of the pouring? A. Yes, sir.

Q. That is, the man who does that is under you?

A. Yes, sir.

Q. This slush is brought to you? A. Yes, sir.

Q. Where is it made? A. In the mill room.

Q. Do you know what the components of the slush are?

A. No, sir.

Mr. NOBLE: I object to this question. Your witnesses objected to answering anything about the component parts, and I did not ask them those questions. 3

Mr. GROSVENOR: I have not asked him what they were. I have only asked him if he knew them, and he said no. This examination is simply to show what other processes are of importance in the making of bathtubs.

Q. Now, you said Mr. McKinney has charge of the making of the slush? A. Yes, sir.

Q. And he has charge of the making of the powder? 4

A. Yes, sir.

Q. Do you know what goes into the making of the powder?

Mr. NOBLE: Note the same objection.

A. No, sir.

Q. Do you know whether there are half a dozen or a dozen ingredients?

Mr. NOBLE: Same objection.

A. No, sir.

Q. Did you ever make a study of the subject?

THE WITNESS: I don't understand your question.

Q. Did you ever study the chemistry or the scientific part or the duties connected with the making of this enameling powder which is sifted on the tub?

A. No, only as it applied to the material when I was working on it.

Q. You always took it as it came to you, and if you did not think that it fused or melted properly, then you called the attention of Mr. McKinney? A. Yes, sir.

Q. That is, some times the powder would melt and fuse with the iron, and some times it would not? In other words, there are grades, aren't there, of powder?

A. There are grades only as to the color or density.

Q. What do you mean by that?

A. Well, I mean that you may get a powder and you may get a particular melt of powder that will be a little off color.

Q. That is, the tub will be brown when it is finished?

A. No, but it will not have a pure clear white finish, as it should have.

Q. And at such times you call his attention to the matter; is that right? A. Yes, sir.

Q. You do not know whether he changes the ingredients which go to make up the powder from time to time, do you?

A. I couldn't say.

Q. How about the slush; is that always of the same quality? A. There are variations in that too.

Q. Do you change the slush from time to time?

A. I don't know personally.

Q. Well, has its appearance been different from time to time?

A. Its appearance has been different once or twice.

Q. Would you call that to Mr. McKinney's attention, and tell him which was the better? A. Yes, sir.

Q. From your observation? A. Yes, sir.

Q. And he would give you the one that you preferred?

A. Yes, sir.

Q. Would the powders vary from time to time?

A. Not very much.

Q. But a little? A. Very little variation.

Q. Then you would tell him which kind you liked?

A. I would tell him if there was anything the matter with it. 1

Q. That is, in the fusing of it? A. In the working of it.

Q. Do you know whether any zinc is used in the making of the powder?

Mr. NOBLE: Objected to as immaterial and irrelevant and as violating the agreement of counsel as to the question of the manner of making these powders.

Mr. GROSVENOR: I don't want to go into the secrets of the business. Counsel apparently admits that this is one of the secrets of the business.

Mr. NOBLE: Counsel only stands upon the professional understanding which was had. 2

Mr. GROSVENOR: Yes, there are some things, of course, which cannot be disclosed.

Q. Is Mr. McKinney a chemist? A. No, sir.

Q. How long has he been with you?

A. The present head of the mill room has been with us about a year, I think.

Q. About a year; you call it the mill room where the powder and slush are made? A. Yes, sir.

Q. Where did he come from? 3

A. He came from New Brighton; a young man; I think he was up to the Porcela Works.

Q. Where is that? A. In New Brighton.

Q. What do they make there? A. Porcela.

Q. What is that?

A. A substance for cleaning bathtubs or any enameled ware.

Q. Who was his predecessor?

A. His brother, B. A. McKinney.

Q. Where is he now? A. Canada, I believe.

Q. Have you ever been in the mill room? A. Yes, sir. 4

Q. The furnaces are in the mill rooms, aren't they?

A. Yes, sir.

Q. The various ingredients after being mixed are poured into this furnace and melted, aren't they? A. Yes, sir.

Q. The slush is made the same way? A. Yes, sir.

Q. There are lots of articles or ingredients that make up this mixture that is poured into the furnace for the making of the powder, is that right? A. Yes, sir.

Q. And they are put in in different proportions?

A. Yes, sir.

Q. Now, go to the cupola, are you familiar with the construction of the cupola? A. Yes, sir.

Q. If it was out of repair, could you put it in commission again? A. No, sir.

Q. If the furnaces in the mill room, which are used for melting and making the powder, if they became out of order could you fix them?

A. I would know how to instruct the bricklayer to fix it.

Q. The furnace that is used in your mill room is an ordinary furnace, isn't it?

A. An ordinary furnace for that purpose; it is constructed for that purpose.

Q. Different from the furnace used for the heating of the iron tubs, is it not? A. Yes, sir.

Q. Now, going back to the cupola, do you know what is thrown into that? A. Yes, sir.

Q. Do you know the exact proportions?

A. I know the proportions that ought to be thrown in.

Q. Have you made any change in that in your business since it started? A. I don't know.

Q. You do not know whether there has been any changes made in the character of the pig iron thrown in, that is as to the chemical analyses of that iron? A. I couldn't say.

Q. Do you know whether those are matters which the chemists or scientific men give care to?

A. That is a matter which is regulated between the manager of our plant and the foundry foreman, based upon the result from the foundry and the enameling department.

Q. In other words, from time to time, the quality of the castings may vary, that is, some castings receive the powder better than other castings? A. No.

Q. What do you mean, then?

A. I mean that you are liable to get a mixture of iron in there that has not enough silicate; it is too hard and we have considerable breakage; that is called to the attention of the manager and to the foundry foreman.

Q. Breakage where? A. In the casting.

Q. And the components of the iron are some of the things that have to be regarded, is that right? A. Yes, sir.

Mr. NOBLE: Of course, all this testimony is taken subject to my objections as immaterial, irrelevant, incompetent and not proper cross examination.

BY MR. GROSVENOR: 1

Q. Who is this manager of your works?
A. Mr. W. C. McKinney.
Q. Is that the same McKinney you have mentioned?
A. No, sir.
Q. Is he ahead of the other McKinney?
A. Yes, sir; he is the manager of the Dawes & Myler Works of New Brighton.
Q. Who is the other McKinney, the head of the mill room? A. Yes, sir.
Q. He would be under the other McKinney? A. Yes, sir.
Q. Who is your direct superior? A. The manager. 2
Q. Are you paid a salary or by the day?
A. I am paid a salary.
Q. Who is the next man above the general manager, the Mr. McKinney the general manager?

MR. NOBLE: Objected to as irrelevant, immaterial and not proper cross examination.

A. Mr. Dawes.
Q. Mr. Dawes has general supervision of the manufacturing end of the business, of its different manufactures, is that right? 3

MR. NOBLE: Objected to on the same grounds.

Q. Respecting this table upon which the tub is placed after it is taken from the furnace, are there patents on that table?

MR. NOBLE: Objected to as being incompetent, irrelevant, immaterial and improper cross examination.

A. I couldn't say.
Q. You couldn't say?
A. I don't know whether the table is patented or not.
Q. Did you make the table? A. No, sir. 4
Q. Do you know whether you bought it?
A. We made it at our own factory.
Q. That is what I meant; now, how long has that table been in use?
A. Since 1900, I think, to the best of my recollection.
Q. Who devised it? A. Well—

MR. NOBLE: Note the same objections, please.

1 A. (Continuing): It was devised partly by one of our machinists, partly by the superintendent.

Q. Who? A. John F. Whitehead.

Q. This table, as I understand it, has a variety of wheels or levers or screws by which the tub can be turned lengthwish or sidewise?

A. It is turned sidewise by the use of a lever.

Q. The tub in the furnace rests in a natural position?

A. Yes, sir.

Q. It is taken out of the furnace and placed on this cradle again in a natural position? A. Yes, sir.

2 Q. Now, going to this furnace where the tub is placed, how many tubs can you put in a furnace? A. One.

Q. Is the furnace operated or made hot by gas or oil?

A. Gas in the summertime, oil in the wintertime if we have no gas.

BY MR. NOBLE:

Q. Is that natural gas? A. Yes, sir.

BY MR. GROSVENOR:

Q. Haven't there been changes in the construction of that
3 furnace from time to time in the last twelve years?

A. It is practically the same furnace.

Q. Now, when the tub is taken out of this furnace and this forked tool is placed under it, it is supported by a crane, that is the fork is suspended on a crane?

A. On the end of a crane.

Q. And that is swung over to the side? A. Yes, sir.

Q. To the right or the left of the furnace?

A. In some furnaces it is to the left and in some to the right; it depends on the position of the crane; the table is on the left generally.

4 Q. How many furnaces do you have in a room?

THE WITNESS: In a room?

Q. Are the furnaces in a straight building or do you have a few in one building and a few in another?

A. We have six bathtub furnaces in one room.

Q. Now, after the slush coat is applied, what is the color of the tub? It is wet when applied, is it not? A. Yes, sir.

Q. And what color is it? A. Grey, a kind of grey color.

Q. You let it dry then, don't you? A. Yes, sir.

Q. How long does it take this tub when you put it in to be heated? 1

A Well, that is a question that I could not very well answer you, because it depends on the position of the furnace and the kind of tub and no enameler can burn slush on a casting by time; it is a matter of judgment.

Q. There is a good deal of judgment in that?

A. Yes, sir; it is a matter of judgment.

Q. You have to watch it?

A. Yes, sir; he knows about how long it takes but he can not burn it by time.

Q. A furnace may be hot at some time and cool at some time? 2

A. Yes, sir; or there may be one hundred different things.

Q. Now, why is it so important to see that that tub is in there just the right amount of time? What will happen if it is in there too long?

A. The base coat will be destroyed; then if an enameler would put enamel on that there would be no cohesion between the enamel and the iron.

Q. Suppose you did not leave it long enough, then what would happen?

A. Then you would have trouble, you could not get a smooth tub; it would blow out in holes. 3

Q. When you apply the powder to the slush coat then there would be pin holes? A. Yes, sir.

Q. And that is true no matter what sort of a dredger you used, is it not? A. That is true under all circumstances.

Q. Now, you stated that you could not give the time exactly. Give it approximately. What are the limits, that is to say, in which a tub after it is put in, from then on, tell us approximately how long it takes to get that tub up to the right degree of temperature?

A. I cannot answer that question because I do not know. I never knew of anybody trying to time the burning of the slush or first coat; it depends on the condition of the furnace; if the furnace is hot it will not take as long as if it was cold; the man looks in there and sees if it is hot enough for that piece. 4

Q. It is very important to get it at the right temperature?

A. It must be at the right temperature; that is, if you get

1 it too hot, the tendency is to destroy it, but you have to bring it up to a certain heat.

Q. Is it five minutes or fifteen minutes; I want to get it just approximately?

A. Well, I would say that about eight minutes would be about the time for an ordinary tub, to the best of my knowledge, that is.

Q. It would not vary more than a few minutes one way or the other?

A. I would not think so, not unless you had an extremely cold furnace.

2 Q. This is, now, the first time you put it in? A. Yes, sir.

Q. Sometimes there may be something the matter with the furnace, is that right?

A. No, a man may come to work Monday morning and the man responsible for the furnaces may not have turned on enough gas in one of them to get it hot; that furnace would be cold all day.

Q. You take the tub out and sit it on the table; then, what is the first part of that tub on which you put enamel?

A. The top of the rim.

Q. With these Arrott dredgers—are the dredgers of dif-

3 ferent sizes?

THE WITNESS: For bathtubs?

Mr. GROSVENOR: Yes.

A. The rim dredge is considerably smaller.

Q. That is the small one and is held by hand? A. Yes.

Q. The large one is supported from the ceiling?

A. Yes, sir; it is supported by a crane or iron in some factories; it is in ours.

Q. Have you been in other standard factories?

A. Yes, sir.

4 Q. Do they follow the same principle there?

A. They do at the present time.

Q. How many handle this tub as a rule? A. Two.

Q. Don't you ever have three?

A. No, sir; never have three on bathtubs.

Q. And small ware you have one, don't you?

A. One and two.

Q. For lavatories how many do you have generally?

A. Generally have two.

Q. And on a sink? A. Two.

Q. What do you call the two men? 1

A. The enameler and the rim man.

Q. The enameler uses the heaviest dredge?

A. Uses the large dredge.

Q. The other man uses the rim dredge? A. Yes, sir.

Q. Who turns the wheel or the levers?

A. The enameler operates the table by means of a foot valve.

Q. That is the man who operates the large dredge?

A. Yes, sir.

Q. Do these two men start powdering the thing at the same time? A. Yes, sir. 2

Q. What part of the tub does the enameler do?

A. He dredges the part of the rim towards him and the inside of the tub.

Q. And the other man?

A. Dredges the outside of the tub as it comes down to him.

Q. The enameler does the body of the tub? A. Yes, sir.

Q. And the rim man the rim only on the outside?

A. Yes, sir.

Q. How long does it take to do that and put the tub back in the vault? 3

A. I don't know, just two or three minutes.

Q. Just two or three minutes?

A. Yes, sir; to the best of my knowledge; I don't know positively; I never timed it.

Q. During this time that the powder is coming on to this tub, the stream from the dredger sifts over the tub two or three times?

A. While the enamel is being put on the tub the table is let over and the enameler dredges the side.

Q. Who does that? A. The dredger or the enameler.

Q. That is the inside, now? 4

A. Yes, the outside is the rim man's work.

Q. The outside of the tubs is not enameled?

A. Very seldom; the enameler dredges one side of the tub and by pressing the foot valve he causes the table to turn, and by pressing it again he gets the other side.

Q. That is the off side? A. Yes, sir.

Q. In spreading the powder over one of these sides he passes this dredger over the sides, doesn't he?

A. Yes, sir; and when he gets the right amount—

Q. It is necessary to do that, is it not? A. Yes, sir.

Q. And that takes how long?

A. About two or three minutes.

Q. How long would it take with the long handled hand dredger?

A. Well, I think it would take five or six minutes, to the best of my belief.

Q. Have you ever timed it? A. No, sir.

Q. You are just saying that approximately?

A. Yes, sir; and from my experience.

Q. Was it ever timed out there?

A. Yes, sir; I think it was timed.

Q. Who timed it?

A. I think I have heard the enamelers talk about it being timed; I don't know if anybody ever did it or not.

Q. You were at the works when they installed the Arrott patent? A. Yes, sir.

Q. Didn't they have experiments then to see if the patents did it quicker and if so how much quicker?

A. No, sir; we tried it; we demonstrated it was quicker and better than the old method because we got a steady flow of enamel and we could handle the tub quicker.

Mr. GROSVENOR: Will you read that question?

The last question was then read by the stenographer.

Q. Now, you said that some of the enamelers made experiments? A. I have heard them say it.

Q. When was that?

A. I cannot remember whether it was before I left or since I came back.

Q. Were they making them out there?

THE WITNESS: Experiments?

Mr. GROSVENOR: Yes; where were they making them?

A. They were not making any experiments.

Q. I thought you said that some of the enamelers timed themselves?

A. I heard some of the enamelers say that they were timing themselves sometimes in connection with this Arrott dredger, but I never did it.

Q. Then, in speaking of the average length of time you were just basing it on your general observations; is that right?

A. On my general knowledge of how long it took us to make a tub with the old hand dredge and the length of time that it takes us to make a tub with the pneumatic dredger. 1

Q. You say it takes two or three minutes to go over the tub when it first comes up; you then put the tub in the furnace? A. Yes, sir.

Q. And how long do you leave it there then?

A. Until it gets to a certain color which indicates to the enameler that it is fused.

Q. Is that a matter of judgment too?

A. Yes, sir; it is simply a matter of conditions.

Q. Suppose you leave it in too long, what would happen? 2

A. You would destroy it.

Q. Suppose you did not leave it in long enough?

A. You would bring it out and see that you have a rough coat of enamel on and you would put it back in and get it to the point that you wanted it.

Q. And judgment is necessary for that? A. Yes, sir.

Q. You say you do not know how long you keep the tub in the furnace after it is put back after the first application of enamel; is that right?

A. I could not give the exact time.

Q. Give it approximately; you talked so definitely about the difference in time on your direct examination; now give it to us approximately? 3

Mr. NOBLE: The witness is giving apparently responsive answers and I suggest that the lecture by counsel for the Government is immaterial and irrelevant.

A. It is a hard matter to give time about matters that are always a question of judgment. I can answer directly as to how many tubs we can make in a certain time, but when it comes to a matter that for twenty-one years has been a matter of judgment, it is almost impossible to do that, and I would say something that is not true and I do not want to do that. 4

Q. In other words, one tub may be in there longer than the next tub? A. Yes, sir.

Q. When you first started to enamel were you able to tell how long to leave it in?

A. I started on kettles, and I absorbed that knowledge from that time until the time I started on bathtubs; then I

had judgment to tell when the tubs were hot enough and when the enamel was fused enough.

Q. That is one of the difficult things to learn, is it not?

A. Yes, sir.

Q. And that is something that must be learned just the same as the amount of powder that is to be put on the tub?

A. We have to learn that; it is part of the business.

Q. If you gave a man a dredger, he could not tell just what the color is going to be on the tub any more than he can how long it should stay in the furnace?

A. When we put him on the tub we put him on the rim and he acquires that knowledge while he is working there. Every time the tub goes in the furnace he, being on the fork with the enameler, he must see it; when the door is opened it is directly in front of him and he can observe the color every time that tub is taken out.

Q. How do you train an enameler? Do you tell him about the different things that he must observe? A. No, sir.

Q. He learns from what he gets from the first man?

A. He can tell from what he sees being done, and if he has any ambition to succeed he realizes that if he wants to advance, he realizes that it is up to him to make good.

Q. In all these things? A. Yes, sir.

Q. Now, we have the tub in the furnace after the first coat; you leave it in there a few minutes and then you take it out again and put on another coat? A. Yes, sir.

Q. The two men operating as before? A. Yes, sir.

Q. And they put on as much powder as the first time?

A. It all depends on how much they put on the first time; the man knows how much he put on there.

Q. By the amount that was in the sieve the first time?

A. By simply a matter of what is intuition with him; he knows how much he is getting on there, and if by any means he would get a little more on there than he intended to, then that would be in his mind and he would just skim over it very lightly. He knows those things from practice and observation.

Q. How many times is this process of putting the coats on repeated? A. Twice; sometimes three times.

By Mr. Christy:

Q. You mean repeated twice or just two coats?

A. Two coats.

BY MR. NOBLE:

Q. Talking about the Arrott dredger now, aren't you?

A. Yes, sir.

BY MR. GROSVENOR:

Q. By a coat you mean the number of times that it is taken out of the furnace? A. I mean applied to it.

Q. You do not mean the number of times the enameler goes over it when it is taken out?

A. No, sir; I mean that when a man starts out to enamel a tub after it comes out of the furnace until he puts it back; that is what we call in shop parlance a coat.

Q. Sometimes a dredge, is it not? A. Yes, sir.

Q. A coat may consist of going over the tub several times with the sieve or dredge, isn't that right?

A. It does, but very seldom more than twice.

Q. I mean when the tub is taken out of the furnace for a coat it is turned around on the table a number of times so that the powder goes all over it more than once? A. Twice.

Q. Twice?

A. Yes, sir; they generally—in fact, invariably—go twice around it and then put it back.

Q. Then they put it back? A. Yes, sir.

Q. Then they take it out and go over it twice again?

A. If they think they can get a good tub then that is all they do.

Q. After the second coat is applied, the tub is again put back in the furnace, is it not? A. Yes, sir.

Q. And then it is taken out and put aside?

A. Yes, sir; it is examined then to see that there are no imperfections in it and if there are we proceed to fix them.

Q. How long does the tub stay in the furnace this last time, after the application of the second coat?

A. Just long enough to fuse that enamel on; if there is more enamel on it takes a little longer to fuse.

Q. But the differences are only a minute or two?

A. Yes, sir.

Q. And putting on the second coat of enamel it only takes a minute or two? A. Yes, sir; generally.

Q. How long did it take with the large hand dredge?

A. It took about twice as long.

Q. How long would that be?

1 A. That would be between four and five minutes, or between three and four minutes.

Q. Did you ever time them? A. No, sir.

Examination Suspended.

At this point the hearing was adjourned until 10:30 o'clock the following morning at the same place.

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2 IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

vs.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

3 Post Office Building, Pittsburg, Pa.,

February 15, 1911.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney General.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
MARSHALL A. CHRISTY, Esq.,
on behalf of the Defendants.

4 Pursuant to adjournment the taking of testimony for the Defendants was resumed in the Post Office Building, in Pittsburg, Pa., on the fifteenth day of February, 1911, at 10:30 o'clock A. M.

GEORGE SHIELD, a witness heretofore produced and sworn on behalf of Defendants, resumed the stand for a continuation of cross examination and testified as follows:

CROSS EXAMINATION BY Mr. GROSVENOR (continued):

Q. Mr. Shield, at my request Counsel for the Defendants

have brought into Court three different dredges, one of the same being a long handled dredge which you said during cross examination yesterday you would have here to-day? 1

A. Yes, sir.

Q. I now show you the shortest of the three dredges and ask you what it is (indicating)?

A. That is the short-handled hand dredge as used in the Standard works at Allegheny prior to the introduction of the pneumatic dredger, but not similar, only in a general way, to the short-handled dredge as used at the Dawes & Myler Works prior to the introduction of the pneumatic dredger.

Q. Yesterday you testified that there was a certain short-handled dredge in use until about '91 or '92; is that right? 2

A. 1891.

Q. Then, in the Dawes & Myler Works you first planned and devised a long-handled dredge; is this dredge which I now show you similar to the short-handled dredge, which was in use in the Dawes & Myler Works in the beginning of the industry until about 1891?

A. The general outline of it is, but the construction is different.

Q. In what way?

A. The Dawes & Myler dredge, the handle was just about the same length, maybe a trifle shorter; the manner of attaching here (indicating) was the same. 3

Q. You mean the manner of attaching the wooden handle to the sieve was the same?

A. Yes, sir; practically; now, the way this bottom is attached here (indicating) differs materially; at the Dawes & Myler Works we just had a band around here.

Q. You are talking now about the differences in the sieve?

A. The difference in attaching or holding the sieve to the bottom of the dredge.

Q. In respect to the length of the handle this is similar? 4

A. Very much similar; yes, sir; but that is a little longer than the one that we use.

Q. This tapper is in general shape similar to the form you used? A. Yes, sir.

Q. Now, I understand that this style of dredge was given up at the Dawes & Myler factories about '91, is that right?

A. No, it was given up before that time.

Q. It was given up when you adopted the long-handled dredge? A. Yes, sir.

Q. Which was about what time?

A. Well, I cannot remember the date, Mr. Grosvenor.

Q. Just approximately, of course?

A. I think probably four or five years before the introduction of the Arrott dredger.

Q. When was the Arrott dredger introduced?

A. About 1901.

Q. By Dawes & Myler? A. Yes, sir.

Q. Then you gave it up four or five years before you got the Arrott dredger? A. Yes, sir.

Q. And in those four or five years did you use this long-handled dredge (indicating)?

A. Yes, sir; between the time we gave up the short-handled dredge and the introduction of the Arrott dredger that was the dredge we used at the Dawes & Myler Works.

Mr. GROSVENOR: I offer this dredge in evidence as Petitioner's Exhibit No. 278.

Dredge referred to was then marked and filed as "Petitioner's Exhibit No. 278."

Q. I now direct your attention to the long-handled dredge; the handle of the long-handled dredge is about three feet longer, is it not? A. Yes, sir; seven feet long.

Q. The sieve is about one foot in diameter, is it not?

A. About 10 inches.

Q. It is two or three inches more than the diameter of the sieve of the other?

A. We used to use a nine inch bowl on the short-handled dredge.

Q. Other than the difference in the length of the handle and the diameter of the sieve, the chief difference lies in the fact that the long-handled dredge has an iron band around the handle about a foot and a half from the sieve with a hole in which a chain may be inserted?

A. A hook on the end of the chain.

Q. That is the point where the hook on the chain from the crane was attached? A. Yes, sir.

Q. That was to help support the dredge while the workmen guided it over the bathtub? A. Yes, sir.

Q. Before you adopted this long-handled dredge and while you were using the short-handled dredge was there any support from above to assist the workmen? A. No, sir.

Q. Then, in addition to the fact that the old dredge is

three feet shorter, it appears that the workmen had to bear the entire weight of the powder and the dredge in his one hand? A. Yes, sir. 1

Q. That was done by supporting the handle of the dredger under the elbow of the left hand and by holding it close to the body?

A. Yes, sir; he generally supported it right there (indicating) letting it hang there (indicating).

Q. This dredge was abandoned by the Dawes & Myler Works about four years before you got the Arrott patent?

A. Yes, sir; approximately.

Q. There was a period of duration between the time you got the Arrott patent and the time you gave this up? 2

A. Yes, sir.

Q. Wasn't there a smaller dredge for the rim man?

A. Yes, sir; a smaller arrangement for the rim man.

A. And you have a smaller dredger of the Arrott type used on the rims today? A. Yes, sir.

Q. This short-handled dredge was used, though, for the main body of the tub? A. Yes, sir.

Q. In these questions which we are discussing today, then, we are dealing with dredges which were used only on the main body of the tub? A. Yes, sir.

3

Mr. GROSVENOR: I now offer this long-handled dredge in evidence as Petitioner's Exhibit No. 279.

Dredge referred to was then marked and filed as "Petitioner's Exhibit No. 279."

Mr. GROSVENOR: This Exhibit No. 279 has attached to it a tapper similar in shape to the tapper which accompanies No. 278, but the handle of the long-handled dredger is of seamless tube, whereas the handle of the older dredge is of wood.

Q. Now, I show you the third dredger; is this a copy or one of the Arrott dredgers which are being used today? 4

A. Yes, sir.

Q. In your works at New Brighton?

A. Yes, sir; practically.

Q. And is this the type which has been used generally since 1899? A. Since 1901.

Q. Since 1901 at the Dawes & Myler Works? A. Yes, sir.

Q. That has also a band around the handle for the attachment of the hook to the chain upon which the dredge is suspended, is that right? A. Yes, sir.

1 Q. That band is approximately three inches nearer the sieve than the band which supports the long-handled dredge, is that right? A. Yes, sir.

Q. Will you weigh this Arrott dredger in your hand and then take this earliest form of dredge, known as Petitioner's Exhibit No. 278, and tell me which is the heavier?

A. The old long-handled dredge is considerably lighter.

Q. The Arrott dredger is considerably heavier, wouldn't you say? A. Yes, sir.

Q. The handle of the Arrott dredger is of iron? A. Steel.

Q. Solid? A. No, sir; hollow.

2 Q. And the end of the handle particularly is heavy, is it not? A. Yes, sir.

Q. Now, in length the handle of the Arrott dredger is practically ten inches longer than the handle of the old dredge known as Exhibit No. 278? A. Yes, sir.

Q. Is it not the fact that the reason that the Arrott dredger can be used several times heavier than the older form of the dredge—is not the reason the fact that you have the Arrott dredger suspended by a chain which bears the larger part of the weight of that dredger, the chain being attached by a hook about ten inches from the sieve?

3 A. Yes, sir.

Q. Now, comparing the two early hand-dredges the short and the long, is not the chief advantage of the long-handled dredge the fact that that dredge was to be abandoned or suspended on a chain, thus relieving the workman of the weight, in a large measure? A. No, sir.

Q. I am speaking now of the two hand dredges?

A. Yes, sir.

Q. What is the chief advantage?

A. Removing the man away from the extreme heat, it is suspended then, because it would be impossible for a man

4 to hold that dredge so far away from the weight, and it is suspended in that way.

Q. The chief advantage in comparing the two old dredges is that the workman with the long dredge is able to stand further away from the tub? A. Yes, sir.

Q. You testified yesterday that you were not an enameler at the time this long-handled dredge was used; am I correct?

A. Yes, sir; I was foreman at that time.

Q. Will you show me how this (indicating) was held?

A. The man stood about here (indicating) and he supported that in the same manner. 1

Q. I place beside you parallel with the dredge known as Exhibit No. 279, the Arrott dredger and point out to you the facts that with the long-handled dredge you are standing further from the sieve than the length of the handle in the Arrott dredger; is that right? A. Yes, sir.

Mr. GROSVENOR: I now offer this Arrott dredger as Petitioner's Exhibit No. 280.

Dredger referred to was then marked and filed as "Petitioner's Exhibit No. 280."

2

Q. In other words, you are now standing further from the sieve than you could stand in holding the Arrott dredger; is that right? A. Yes, sir.

Q. Compare the weight of this Arrott dredger to the weight of the dredge known as Exhibit 279; which is the heavier of those?

A. The Arrott dredger is the heavier of the two.

Q. The comparative weight of the dredges, the long-handle dredge and the Arrott dredger, is not of great importance for the reason that both of them is suspended from above so that a few pounds of weight difference is not very material? A. In the actual weight of them. 3

Q. Because they are suspended, is that right?

A. Yes, sir.

Q. Will you look again at the Arrott dredger which is known as Exhibit No. 280: there is a small button on the underside of the handle; is that the point from which the workman governs the tapper?

A. That starts the hammer or stops it.

Q. And the end of the tube is hollow; do you attach there the pipe which connects with the compressed air?

A. Yes, sir. 4

Q. So behind the workman, as he holds the dredger, which is done in the same way, is it not? A. No, sir.

Q. Well, then, take the Arrott dredger and show how that is handled? A. In this way (indicating).

Q. Now, take the long-handled dredge and show how that is held? A. This way (demonstrating).

Q. You have testified that you are left-handed; therefore you hold the tapper on the long-handled instrument in your left hand? A. Yes, sir.

1 Q. If you were right-handed you would hold that in your right hand? A. Yes, sir.

Q. When you press this button on the Arrott dredger that starts the tapping at once? A. Yes.

Q. The second that you touch the button the tapping begins? A. The instant that is closed the tapping begins.

Q. Then you keep it closed? A. Yes, sir.

Q. And while it is closed the powder comes out?

A. The powder would be vibrated through the sieve.

Q. Does the powder cease coming out the instant that you let the button come out again? A. Yes, sir.

2 Q. Respecting the amount of powder, the two sieves hold practically the same amount? A. Almost.

Q. The practice is not to fill the sieve with the powder, is it?

A. Fill it within about an inch and a half from the top.

Q. When did you start to make the Luxor tub, do you remember? A. No, I do not.

Q. You were testifying yesterday in answer to Mr. Noble's questions that after the Arrott patent was invented you were able to construct or enamel heavier tubs; is that right? Do you recall that testimony?

3 A. To the best of my knowledge my testimony was that we had increased and made larger tubs since the Arrott dredger was introduced.

Q. And the tub which you instanced as an example was your Luxor tub?

A. Yes, sir; the six foot Luxor was an instance of that.

Q. And that was after you had installed the Arrott patent? A. Yes, sir.

Q. You testified yesterday that you had asked workmen to do that enameling on this heavy tub by the hand method; is that right?

4 THE WITNESS: On the Luxor tub?

MR. GROSVENOR: Yes.

THE WITNESS: By the hand method?

MR. GROSVENOR: Yes.

A. I do not recollect that.

Q. Let me read this testimony to you (reading):

"Q. What have you to say as to the ability of a man, by the hand dredge, to stand that heat and enamel such a tub?

"A. We haven't got any men at the present time who would do it. 1

BY MR. GROSVENOR:

"Q. Have you asked any of them?
"A. Yes, sir."

Do you recall that testimony? A. Yes, sir.

Q. That must have been after the adoption of the Arrott in your plant, because you testified that this tub was not made until after you got the Arrott patent in your place, is that right? A. Yes, sir.

Q. Then you asked men to use this hand dredge on tubs after you had gotten the Arrott patent into your plant, is that right? 2

A. No, sir; I have asked them if they would use the long-handled dredge provided we did not have the Arrott dredger.

Q. Why did you ask them that?

A. Just simply a matter which came up; it came up about two years ago probably and the question has been discussed quite recently in the shop.

Q. How recently? A. Within the last month.

Q. Whether you would?

A. Whether they would or could. 3

Q. Who asked them? A. Me.

Q. Did anyone ask you to ask them that? A. No, sir.

Q. Then why did you?

A. Because we had been discussing this matter of the Arrott dredger and the benefits of it in a general way in the shop.

Q. During the last two or three months? A. Yes, sir.

Q. Two years ago how did you happen to ask them if they would?

A. There was some suit between my employers and the J. L. Mott people, I believe, for some infringement on patent rights; I am not positive about that. 4

Q. Did you testify in that suit?

A. I made depositions to the use of the long-handled dredge.

Q. That is this long-handled dredge (indicating)?

A. Yes, sir.

Q. Which is known as Petitioner's Exhibit No. 279?

A. Yes, if that is the number, it is the long-handled dredge.

1 Q. This one (indicating)? A. Yes, sir.

Q. You made deposition as to the benefits of the use of the long-handled dredge, is that it?

A. The difference between the use of the long-handled dredge and the air dredge.

Q. When did you discontinue the use of the long-handled dredge in your work at the Dawes & Myler Works? A. 1901.

Q. Have you used the long-handled dredge on any of the work there since then?

THE WITNESS: No, sir—do you mean steady or what?

2 Mr. GROSVENOR: No, off and on?

A. I think I used the long-handled dredge to try and make a few tubs.

Q. When did you do that?

A. I think in the early part of 1910; in 1910—in the early part.

Q. Why did you happen to do that?

THE WITNESS: Why did I happen to do it?

Mr. GROSVENOR: Why did you happen to start to do it?

3 A. I wanted to do it because there was some discussion between the manager and myself about the advisability, whether it was possible to use the long-handled dredge on our present table.

Q. What did you do, did you take the dredger out?

A. Just unhooked this dredger (indicating) and put this long-handled one in its place.

Q. Who tapped it?

A. One of the enamelers, and he played out and I tried it.

Q. Did he ever use it before? A. Yes, sir.

4 Q. Was he an enameler prior to 1901? A. Yes, sir.

Q. Then he used the long-handled dredge then, did he?

A. Yes, sir.

Q. During these seven years then, he had had no occasion to use the long-handled dredge, is that right?

A. That is correct.

Q. What is that man's name? A. Cruickshanks.

Q. Did he also testify in that other case? A. No, sir.

Q. Has he been here today or yesterday? A. No, sir.

Q. Has Mr. McKinney been here today or yesterday?

A. Not to my knowledge. 1

Q. Is that the only time you have brought out any long-handled dredge since 1901?

THE WITNESS: Is that the only time I have used it or it has been used in the factory?

Mr. GROSVENOR: Yes.

A. Yes.

Q. It is the only time you ever tried to do it? A. Yes, sir.

Q. Have you used the long-handled dredge on any of the articles? A. No, sir.

Q. Don't you use the long-handled dredge on any part of 2 the rims, on the under part of the tops—

A. No, sir; the only thing we use the small hand dredge—we have them laying around the shop so that if a man gets a hole or anything in the bottom of his tub it is used so that a man can tap a little powder around that spot.

Q. In other words, it is used to cure imperfections which may occur during the enameling process from time to time?

A. It is used to put on powder just in a small spot.

Q. You mean pin holes? A. Well, for the pin holes, yes.

Q. You have a small Arrott dredger, too? A. Yes, sir.

Q. Why don't you use that for the pin holes? 3

A. Because it is attached in close proximity to the back of the table; whenever a tub is finished it is brought over to the other side of the room under an arc light so that the examiner will have enough light to see it by and with the rim dredger it would take a hose probably twenty or twenty-five feet long to carry it to that one place, and therefore we keep those others there; so, if it is necessary to put a little powder on we can do that. The rim dredger is attached to a pipe at the back of the table where the rim man stands, and it is only about eight to ten feet long, it is only long enough to allow him a little swing. 4

Q. That is, the hose? A. Yes, sir.

Q. And the rim dredger is smaller than any of these three? A. Yes, six inches in diameter.

Q. And the length of the handle is about what?

A. About five foot.

Q. All this rim work is done by the small Arrott dredger? A. Yes, sir.

Q. And this larger dredger is used on the body of the tub? A. Yes, sir.

1 Q. That is on the inside? A. Yes, sir.

Q. Because these tubs are not as a general rule enameled on the outside? A. That is right.

Q. You have to have a small hand dredger then near each furnace, don't you, so that when the tub is brought out for final examination under this arc light you may have to put on some powder on a little spot? A. Yes, sir.

Q. And for that reason you have them laying around?

A. The enameler has them conveniently at hand.

Q. In other words pin holes still trouble the enameler?

A. Not so much pin holes as casting holes.

2 Q. What are casting holes?

A. Casting holes are small holes in the casting that the enameler does not discover until he puts the tub in the furnace.

Q. After the casting is smoothed over by these emery wheels and the sand blast it is sent over for your inspection before it goes over to the enameling department; those imperfections then are small imperfections which escape the inspection when the tubs are enameled and then they are seen? A. Yes, sir.

Q. They are discovered under this light?

3 A. Well, we take what is called a patcher.

Q. What is a patcher?

A. That is a piece of steel three or three and a half feet long, sharpened at one point with the other end shaped in a spoon shape; he takes the sharp end of that patcher and puts it in the hole to see if that hole is just as large all the way through. It might be possible that there is a blow hole in there; that is that it is larger under the surface of the iron than it is on the surface.

Q. That is a blow hole in the iron? A. Yes, sir.

Q. And then what does he do?

4 A. He opens that out until the hole is as large at the exit as it is at any other place, and then puts some enamel powder in there.

Q. With the dredger?

A. With the patcher, and then to smooth that over he puts just a pat of powder on it and runs it back in the furnace to fuse that little bit of enamel.

Q. And that hole is due to the fact that the powder does not fuse properly? A. In some cases.

Q. What are the other cases?

A. The slush coat may be just a little too heavy at some point; it might be that the enamel is applied too heavy, or it might be that there was not enough enamel on it in the first place. If that were the case, if there was not enough enamel in the first coat or first dredge, he would not have one but he would have a lot of them. 1

Q. If the slush is not put on properly it causes them too, does it not? A. Sometimes.

Q. Now, I suppose in your experience you find that in some days or months there are more pin holes than others?

A. The percentage is never equal.

Q. It varies from time to time? A. Yes, sir. 2

Q. The causes may be different? A. Very different.

Q. You sometimes get a batch of powder which seems is not as satisfactory as other powder, is that right?

A. Yes, sir.

Q. And some days in your judgment and the judgment of those with whom you confer, the iron is not satisfactory?

A. Yes, sir.

Q. And sometimes if results are not satisfying you consider whether the trouble is with the iron or the powder, is that right?

A. We have to find out where the trouble is. 3

Q. But you do not go to the enameler and tell him that he has put on too much enamel, but you look into these other causes, the making of the enamel and the iron and so forth?

A. If one man in the department is having trouble all the time, and the others not, then we know it is he.

Q. And if the others are having trouble, then you know that there is something wrong with the iron or powder?

A. Looking around and finding out what is the trouble.

Q. You do that sometimes, don't you?

A. There are times when we have to do it. 4

Q. You started with the Dawes and Myler Works in 1888? A. Yes, sir.

Q. When did they open their factory?

A. Sometime about the late fall or about the holidays in 1887.

Q. When you went with them were they making bathtubs? A. No, sir.

Q. You were familiar with the making of bathtubs?

A. Yes, sir.

1 Q. There has been a gradual development and perfection in the making of bathtubs since 1889? A. Yes, sir.

Q. And there have been changes in the powder?

A. Yes, sir; there have been some changes in the powder since 1888.

Q. You did not make the powder as you testified yesterday, so that the changes would not always be brought to your attention, would they? A. No, sir.

Q. For instance, if the chemist thought that there aught to be more or less tin he would not necessarily tell you?

A. Not necessarily.

2 Q. That is a matter that he is always considering, that is, not always the tin, but the proportions of the ingredients?

A. Only so far as they cause trouble in the enameling of the goods that we make.

Q. And when they do cause trouble he looks into that matter? A. Yes, sir.

Q. You are not in charge of the mill room, but you know enough about the mill room to know that this process is the process followed in making glass?

A. I am not familiar with the process in making

3 glass.

Q. So you do not know whether the process is similar?

A. No, sir.

Q. You do not know whether changes have been made in which the enameling powder has been made, that is I am referring to the hours the powder had been in the melt?

A. The general process of making powder to-day has been followed for a good many years.

Q. Do you know the number of hours the powder is in the melt? A. Yes, sir.

4 Mr. CHRISTY: I object to that question. It infringes on the understanding which is said to exist respecting the manufacture and the ingredients.

Mr. GROSVENOR: Counsel states that he does not know of such an understanding.

Mr. HEATH: Do you mean to say that it was not an understanding that we would not go into the details of the business?

Mr. GROSVENOR: If there was an understanding it will be in the record, but I deny that there was

such an understanding. I recall at one time one of the witnesses for the Government on cross examination by Mr. Noble was asked some questions respecting the secrets of his business and I suggested to Mr. Noble that he discontinue along that line, or I would find it necessary to examine his witnesses along the same line, and he desisted. 1

Q. You have been making bathtubs since what time, that is sanitary enameled ware?

THE WITNESS: You refer to what is designated sanitary enameled ware at the present time?
Mr. GROSVENOR: Yes; I mean bathtubs, sinks and lavatories? 2

A. To the best of my knowledge we commenced that about 1890; I am not sure.

Q. Were you familiar at that time with the number of hours enameling powder was in the melt?

THE WITNESS: In the melt?
Mr. GROSVENOR: Yes.

A. No, sir.

Q. You were then just an enameler? A. Yes, sir. 3

Q. At what time did you become familiar with the number of hours? A. I couldn't answer that question.

Q. Do you know whether or not there have been any changes in the number of hours since you have been acquainted with it? A. To the best of my knowledge, no.

Q. Do you know all the ingredients that go into the making of your powder?

THE WITNESS: All the ingredients that go into the powder at our enamelling factory?
Mr. GROSVENOR: Yes. 4

A. No, sir.

Q. Do you know what changes, if any, have been made in the ingredients while you have been there?

A. No, sir.

Q. What would you call these dredges, Mr. Shield, a tool?

Mr. CHRISTY: I note an objection.

A. I consider this (indicating) and the short-handled

1 dredge a tool; the Arrott dredger I would consider an instrument.

Q. Used in the manufacture of sanitary enameled iron ware? A. Yes, sir.

Q. It is not part of the sanitary enameled iron ware?

A. No, sir; it is used for the purpose of placing the enamel on the cast iron.

Q. Yesterday you testified that when a man used this short dredge he had to use an asbestos face cloth?

A. No, sir; a mask.

Q. And an asbestos shirt or apron?

2 A. A coat lined on the outside with asbestos.

Q. And a leather apron? A. A heavy canvas apron?

Q. And gloves? A. Yes, sir; asbestos gloves.

Q. Were those things used when you were using this long dredge known as Petitioner's Exhibit No. 279?

A. No, sir.

Q. All those articles for protection, then, were abandoned? A. Except the gloves.

Q. Before the Arrott patent was adopted? A. Yes, sir.

Q. Do you use gloves with the Arrott patent?

A. Yes, sir.

3 Q. On which hand? A. On one hand.

Q. For which hand? A. The right hand for me and left hand for any other man.

Q. Then, as regards the protection of the workmen, there has been no change respecting the apparel since you adopted the Arrott patent?

A. Since we abandoned this (indicating) and adopted this.

Q. That is since you abandoned Exhibit No. 279, which is the long-handled dredge and adopted No. 280, the Arrott patent?

4 A. The enameller uses a canvas sleeve on the arm that is exposed to the tub.

Q. He uses that with the Arrott dredger? A. Yes, sir.

Q. And that was used with the long-handled dredge?

A. Yes, sir.

Q. That is to say you have an additional protection with the Arrott dredger that was not required or was not used when the long-handled dredge was used? A. Yes, sir.

Q. In other words, all that description which you gave yesterday of these various articles they had all been aban-

doned with the abandonment of the short-handled dredge? 1

A. Yes, sir; they have not been used with the long-handled dredge.

Q. Now, long before the adoption of the Arrott patent you had in your factory relieved the workmen of a large part of the weight by this method of suspending the dredge on a chain to the crane above?

A. We had relieved him of a part of the weight; yes, sir.

Q. He is not relieved of the entire weight today?

A. No, sir; not the entire weight.

Q. Has there been any change in the method of suspend- 2
ing the dredge since you adopted the Arrott dredger?

A. No, sir.

Q. Then, in comparing the long-handled dredge which is Exhibit No. 279, and the Arrott dredger which is Exhibit No. 280, so far as the support of the weight goes, the same proportion is held up by this chain as was held before?

A. Yes, sir.

Q. Now, I will read this to you: "The heat was such as to compel the use of an asbestos glove, aprons and face screens"; that would not be a true description of the method in vogue at your factory at the time you adopted the Arrott 3
patent would it? A. No, sir.

Q. Now, I read you this description of the old method: "In the operation of the application of enamel in the powder form, the dredge or sifter has always been carried by the operator in one hand." If the word "carried" means the entire weight or support of the dredge, that is not an accurate account; that is referring, of course, to your factory and to the methods in vogue there prior to 1899?

A. That was true when we used the short-handled dredge.

Q. But, it was not true after you adopted the long- 4
handled dredge? A. No, sir; not in full.

Q. In other words that word "carried" should be "guided?" A. Yes, sir; to some extent.

Q. Well, he guided it, didn't he? A. Yes, sir.

Q. And he does that with the Arrott dredger?

A. Yes, sir; with this one (indicating) he uses two hands and with this one only one.

Q. Yesterday you testified in answer to this question of Mr. Noble (reading): "He had to support and guide with

1 one hand? A. Yes, sir." Taking up the two methods, the oldest method before you had the support, the entire weight was supported by the one hand, is that right? A. Yes, sir.

Q. After you had the long-handled dredge, the main weight was supported by this chain, isn't that right?

A. Yes, sir.

Q. You said yesterday: "You take a piece of enameled ware and you just get the minimum amount of powder on the cast iron, and you can take a hammer and hammer that, and you just simply have to wear the enamel off, comparatively speaking, that is, you just have to hammer
2 it off." What do you mean by that? I never heard of anyone hammering bathtubs. Do you mean that is just a possible experiment?

A. When a bathtub is rejected as not being fit to go out to the trade, it is part of my duty to hammer that enamel off to discover if the enamel is being applied in a manner in which it should not be done or if the enameler is doing something he ought not to do.

Q. You do that today? A. Yes, sir.

Q. You have to do that since you have the Arrott patent? A. We always do it.

3 Q. You might explain right here what the different causes are, leading to the rejection of tubs? You mentioned pin holes which might not be covered properly and you also mentioned defects in the casting. What other causes are there, just enumerate them?

Mr. CHRISTY: Is not that going into the business secrets?

Mr. GROSVENOR: That is for you to say. I thought the only essential in the business was the Arrott patent.

Mr. CHRISTY: Defendants' counsel objects to the
4 question as immaterial, and if followed up in all the details possibly involving unnecessary inquiry into matters which have come to the knowledge of the witness through long business experience and which his employer, having spent money to find out, wishes to preserve a secret. The witness is instructed by counsel that as regards structural matters such as those mentioned by examining counsel, he may answer the question but that he need not disclose until

otherwise instructed by the court any more remote causes not generally known in the trade. 1

Mr. GROSVENOR: Now, read the question.

The last question was then read by the stenographer.

A. The finished article being rough—

Q. Are you referring to defects in the enamel now?

A. Yes, sir.

Q. Do you mean wavy? A. Yes, sir; rough.

Q. What caused that?

A. There might be a good many things.

Q. Name some of them. 2

A. The casting might not have been properly smoothed off all over. There may have been some part of the castings not properly smoothed off.

Q. That is before it went to the enamelling room?

A. Yes, sir.

Q. What else?

A. Dirt might fall on the casting and the enameler trying to cover that dirt up.

Q. Fall off where?

A. Fall while the enamel is still in a semi-liquid condition and the enameler might try to cover that up and not get a thoroughly smooth article; that would cause its rejection. He might have small particles of dirt on the casting. 3

Q. Where would that come from?

A. From any place, from the furnace or from the air in the room.

Q. What else?

A. I think that is about all the causes of rejection that I would know of at the present time unless we had a broken casting.

Q. And you testified yesterday that you had charge of the polishing room, is that right? 4

A. General supervision of the cleaning room.

Q. Do you inspect each tub or do you have an assistant of yours inspect each tub before it goes to the enameling room? A. We have an inspector.

Q. And does he reject the tubs before they go over sometimes? A. Yes, sir; that is his business.

Q. Are more tubs rejected at that point or at the final point, when the finished tub is being inspected?

1 A. There are more tubs rejected at that point.

Q. Give us some of the objections that could be raised at that point, that is before the tub goes over to the enameling room?

A. The casting might not be properly made, properly moulded.

Q. What would cause that defect, the improper shape of the mould?

A. I am not expert in foundry matters to enlighten you on that.

Q. It might be in the iron?

2 A. If the casting is not properly made and it is impossible to remedy those defects it is discounted on the moulder, the man who moulds it.

Q. You mean he is paid by the piece? A. Yes, sir.

Q. Are all tubs rejected at this point discounted against him? A. No, sir.

Q. Which are not?

A. Those which we can fix up in the cleaning room, but the others are discounted unless they are broken in the cleaning and at some place in the cleaning room.

Q. What are the defects found at this point of the in-

3 spection of the tub?

A. The man who is supposed to file that tub and clean up, he may have left something undone. He may have left some place not filed which should have been filed, or he may have left something unchipped that ought to have been chipped.

Q. Is there any earlier inspection than this?

A. No, sir; only by the men who get the tubs to dress them; if they, in getting a tub, would see a hole that could not be stopped up, he would naturally set it off to one side. That is the only inspection they get.

4 Q. Do you have special men to make the moulds?

A. Iron moulders; yes, sir.

Q. They are the same men who put the iron in the moulds? A. Yes, sir.

Q. And the same ones who take it out? A. Yes, sir.

Q. They do not have anything to do with the making of the iron? A. No, sir.

Q. You testified yesterday that you have charge of the pattern room too? A. No, sir.

Q. That is outside of your jurisdiction? A. Yes, sir.

Q. Who does have charge of that? A. Mr. Whitehead. 1

Q. Do you have charge of the moulding room?

A. No, sir.

Q. Is that in Mr. Whitehead's department?

A. That is in charge of the foundry foreman, Mr. Christian.

Q. Is it not fact that moulds are made in different ways; don't you sometimes use one pattern and sometimes another?

THE WITNESS: In moulding the tubs?

Mr. GROSVENOR: Yes.

A. No, sir; but there are sometimes two and sometimes 2
one made at the same time.

Q. Perhaps I do not make my question clear: Supposing you are a moulder and you want to make a mould for a casting, what is the first thing you do?

A. The first thing the man has to do is to get his pattern, but I am not a moulder.

Q. What is the next thing?

A. The next thing is to get a flask.

Q. How many flasks does he have to get?

A. That depends on the amount of work he has to do.

Q. Do you know that on some tubs you use two patterns 3
and on some tubs one?

A. Only one pattern for a tub but it may be duplicated.

Q. That is the same thing?

A. For instance, a man is going to make a five foot bathtub with a certain name; there may be several patterns for the same thing.

Q. Can you describe the making of the mould? You lay a lot of sand on one side and pound it down, don't you?

A. You throw sand into the mould and pound it down, yes, sir.

Q. On the pattern? A. Yes, sir. 4

Q. Then you take the other side of the pattern and do the same thing? A. Yes, sir.

Q. In any of those cases do you use two patterns for that purpose?

THE WITNESS: At the same time.

Mr. GROSVENOR: I see you do not understand this part of the business.

THE WITNESS: No, sir.

1 Q. Your experience in the enamelling business has been confined to your factory, has it not? A. Yes, sir.

Q. During the four years that you were away were you in the enameling business?

A. No, sir; only for about six months.

Q. Where were you?

A. I was in Cincinnati for a man out there.

Q. Have you been over any other factories?

A. I have been in the Standard Works' factory.

Q. There?

A. At Allegheny; I have been in the Ahrens and Ott
2 Works in Louisville, Kentucky.

Q. They are now part of the Standard? A. Yes, sir.

Q. Have your visits been since they were a part of the Standard? A. Yes, sir.

Q. Both to Allegheny and Louisville? A. Yes, sir.

Q. Were you to any others?

A. The Colwell Lead Company of Elizabeth, New Jersey.

Q. When did you go over their factory?

A. About December one year ago.

Q. When, and what other factory did you go over?

A. The Day-Ward Manufacturing Company's enameling
3 department.

Q. Where was that? A. Warren, Ohio.

Q. When did you go over that plant?

A. About six years ago.

Q. What sort of a dredge were they using at that time?

A. A long-handled dredge supported like this.

Q. Like which?

A. Like this one, Petitioner's Exhibit No. 279 (indicating), the only difference being that they had some sort of apparatus for getting out here (indicating) and the man working his arm here (indicating).

4 Q. That is instead of this tapper they had a sort of mechanical adjustment there (indicating)? A. Yes, sir.

Q. Have you been over any other factories?

A. No, not in late years.

Q. As I recall, the Ahrens and Ott plant and the Allegheny plant went into the Standard Manufacturing Company about 1899; do you know whether or not that is so.

A. Or 1900.

Q. Do you know whether those factories were using this long-handled dredge about that time?

A. The Standard was not; it was using the Arrott. 1

Q. Just previous to the adoption of the Arrott dredge, were they using the long-handled dredge?

A. No, sir; I don't think they were.

Q. They were still using the short-handled dredge?

A. Yes, sir.

Q. Take the Ahrens and Ott Works, had you been there and seen them using the dredger?

A. If my memory serves me right they were using the Arrott dredger at the time I was out there; I am not positive about that, though.

Q. Yesterday you testified that since the adoption of 2
the Arrott dredger you did not have to keep the tubs so hot; do you recall that testimony? A. Yes, sir.

Q. How much difference is there in the temperature; have you any idea?

A. No, sir; not to state to anyone; I know it when I see it in the furnace.

Q. That is, you can tell by color; is that right?

A. Yes, sir.

Q. Then, you would instruct the next man by color; that is, you would instruct the apprentice by telling him to look at the color?

A. The apprentice would absorb that information him- 3
self while working with the enameler.

Q. Under the old system, that is before the adoption of the Arrott dredger, how many times did you use to put your tub in the furnace; yesterday you testified that you now give them two coats?

A. The tubs we now give two coats under the old system we had to give four coats.

Q. That is with the short-handled dredge? A. Yes, sir.

Q. You testified yesterday that you give them all two coats? A. No.

Q. Well, what was your testimony? 4

A. We have different grades of tubs; our high grade tubs have three coats of enamel on them; our guaranteed baths have three coats of enamel on.

Q. And which have two?

A. The Competition or two year guaranteed baths have two coats on.

Q. The five years generally has three, is that right?

A. Yes, sir.

1 then he will not have the powder sticking—in other words, in this business of enameling is not the character and the quality of the enameling powder the most important consideration? A. Yes, sir; it is.

Q. You cannot take any powder, can you, and put it into that sieve and expect it to be all right and do for enameling purposes?

A. No, sir; it has got to be all right.

Q. Exactly right? A. Yes, sir.

Q. That powder which you use is the result of years of study and attention to that matter alone? A. Yes, sir.

2 Q. By trained chemists, some of them are, aren't they?

A. No, I don't think so.

Q. I don't mean necessarily a college man, but is not the man who makes it—is it not necessary for him to understand the components that go into the powder? A. Yes, sir.

Q. And it is necessary for him to understand the components of the powder and the grounding of the powder to the proper fineness? A. Yes, sir.

Q. On page 1133 of the testimony you said: "After his tub came out with one dredge on, it was evident that there were blue places in it, and then it was necessary for him to 3 put as much powder as he could on those blue places and touch as little as possible on the places where it was white. He knew that it was heavy because it was white, and he knew that it was somewheres thin, because there it was blue." The tub is red, is it not, when it comes out?

A. Yes, sir.

Q. Doesn't the powder become yellowish? A. Yes, sir.

Q. When it is thin you mean—

A. (Interrupting): When it is thin the iron or base coat shows through that skim of yellow enamel on there; it is very evident to one who works at it.

4 Q. And doesn't the enameler, the first thing, look into it?

A. Yes, sir; it is turned over to him and he looks it over.

Q. He looks at it today too, doesn't he?

A. He looks at it for anything so that it can be fixed up at that stage; any defects could be fixed up then better than after the tub is finished.

Q. What kind of defects could there be?

A. There could be some dirt in there or there could be a casting hole.

Q. Are there many holes found in those castings?

A. In making a casting there are always possibilities of those holes forming; the hole might extend under the pocket for five or six inches, but the outlet might only be as large as the head of a pin; when you get an air pocket or blow hole in there you have a place about as large as an ordinary green pea, but the outlet from that may not be larger than the head of a pin. 1

Q. Well, what is done about that? A. He opens that up.

Q. With a file? A. With the patcher.

Q. The same patcher that you referred to previously?

A. Yes, sir.

Q. During the time that you have been with the Dawes & Myler Works there have been improvements made in the method of handling the tub, that is of putting it in the furnace and taking it out, and the character of the furnace used? A. Yes, sir. 2

Q. And all this helped in economizing in time and labor?

A. To a certain extent; yes, sir; we would not have them in force if it had not been for some such reason as that.

Q. These improvements have all contributed to the advantage of the workmen? A. To a certain extent.

Q. The Arrott patent is not the only reason why he can bring a greater amount and a better product out of the furnace, then? A. Not entirely. 3

Q. Before the Arrott patent was installed and while you were using this long-handled dredge, you had a table to turn the bathtub around while it was being enameled, didn't you? A. Yes, sir.

Q. As I understand, the only difference in the table that you now use is that there is a foot valve attachment so that the enameler can now turn the table, saving the services of one man?

A. That is particularly the difference; the table would have to be reconstructed to work it in that manner— 4

Q. Well, you don't know whether the table is patented?

A. I do not.

Q. The third man who used to turn the table was simply the apprentice? A. I don't know—

Q. He was the low-priced man of the three?

A. Yes, sir.

Q. Have there been any changes while you have been in the factory in the putting on of the slush coat?

A. No, no practical changes; there may have been a

slight alteration in the way certain men handled the tubs but to all intents and purposes it is put on in the same manner at our factory always.

Q. It is poured on? A. Yes, sir.

Q. Then, what becomes of it, don't you save it?

A. No, sir.

Q. It is expensive, is it not? A. I could not answer that.

Q. Do you know what the enameling powder costs, that is the powder? A. No, I cannot answer that.

Q. That is outside of your range? A. Yes, sir.

Q. But you do know that some enamel powder costs a little and some a lot?

A. I know that some costs more than others.

Q. You use a different grade of enamel for the different grade of tubs? A. Yes, sir.

Q. You use a higher grade of enamel for the better tubs?

A. Yes, sir; I think so.

Q. How about the slush? A. Use the same slush for all.

Q. You spoke of the great amount of care necessary in putting the tub in the furnace with the old method; you cannot follow the careless method now, can you?

A. No, you can go at it rapidly and you have no danger of knocking the powder down.

Q. Well, the crane is just the same? A. Yes, sir.

Q. And the prong is just the same? A. Yes, sir.

Q. You just swing it out and around as fast as it can be done? A. Yes, sir.

Q. Of course, bumping the sides of the furnace—

A. Oh, that would spoil the tub.

Q. Under the old style or the new method? A. Yes, sir.

Q. Under the old style or the new method either one?

A. Yes, sir.

Q. Could you give us the idea of the number of tubs or the difference in the number of tubs that are lost owing to the jarring of the tub as it is put in the furnace?

A. It is a thing that we never have now; how many we did lose at that time or how much trouble we had, I could not tell you with any accuracy; I know we were troubled with it all the time and had to be extremely careful.

Q. When they were extremely careful were a great many lost? A. No.

Q. And you generally had been extremely careful?

A. Yes, sir.

Q. The only gain today is that the men do not have to be so careful, is that it? 1

A. The men do not have to take up so much time.

Q. I don't understand what you mean by the porous enamel; do you refer to the condition of the enamel after it has been fused and the tub is finished?

A. Yes, sir; it has a porous appearance.

Q. The term "egg-shell finish," is that a term used in the trade today? A. Yes, sir.

Q. You do not mean us to infer that there are no more tubs made with an eggshell finish, but that the occurrence is not as frequent? 2

A. It is very seldom that you ever see it.

Q. Explain what you mean by being porous?

A. Well, if you take an egg shell or the skin of human being, and when you put a magnifying glass on it, you can see hundreds of little pores on it, just barely visible to the naked eye.

Q. And the enamel is that way when it has an egg-shell finish? A. No, sir; then it is porous.

Q. Is not that the egg-shell finish?

A. No, sir; the egg-shell finish means that it is not the pure white color. 3

Q. Then you don't mean the two terms to be synonymous?

A. No, sir.

Q. What causes that porous condition?

A. I presume it is due to the composition of the powder.

Q. That is the powder was not mixed just properly; now, when the tubs have been porous the attention of the man in the mill room is called? A. We never have any now.

Q. Never did? A. Yes, sir; but not now.

Q. They are not that way now?

A. No, sir; but they were all that way.

Q. All that you sold? 4

A. Yes, sir; all more or less porous at that time from the very nature of it, from the nature of its composition it was porous.

Q. That is the composition of the powder? A. Yes, sir.

Q. Has the composition of the powder been changed?

A. Yes, sir.

Q. Since then?

A. Yes, sir; the powder today, the enamel today is solid; you can flake a piece off and it is solid clean through.

Q. You do not know what ingredients have been placed in the powder to give it that new quality? A. No, sir.

Q. But you do know that there has been a change in the composition? A. Yes, sir.

Q. Now, take the term "egg-shell finish" and describe that?

A. Ido not know whether I can make myself plain or not; to the ordinary average layman it is a defect which is not noticeable; the jobber and the manufacturer and the trade are the people who notice that condition. A man not familiar with the business might see a hundred of those tubs and not know what is the matter with them.

Examination Suspended.

At this point a recess was taken until two o'clock.

After Recess.

GEORGE SHIELD, resumed the stand for continuation of cross examination and testified as follows:

CROSS EXAMINATION BY MR. GROSVENOR (continued):

Q. Describe the appearance of the egg-shell finish?

A. The egg-shell finish, as near as I can describe, is apparently a modified mottled color; that is, there seems to be two shades; they are both white; either one of those colors would look all right by itself, but when you get the two of them combined in what is known as the egg-shell finish there is a noticeable difference to the ordinary enameler or jobber.

Q. That is very apparent? A. Yes, sir; it is.

Q. That is a different appearance from the porous finish which you have described?

A. Yes, sir; a porous finish lacks the lustre or the gloss; the egg-shell finish may have the gloss, but there is a difference in the color; just like a piece of mottled castile soap, but not so pronounced; it cannot be so pronounced or the ordinary man would notice it.

Q. When you find in your tubs this egg-shell appearance, can you, as in the case of the porous finish, go to the man in charge of the making of the powder and bring it to his attention?

A. We did when we had it; we haven't had that now for a long time. When we had it the last time, I could not say. 1

Q. When you had it the last time did you bring it to the attention of the man making the powder? A. Yes, sir.

Q. Did you do away with that powder?

A. No, sir; we used that powder on an inferior grade of tubs, on the lowest grade we make, the Nemo.

Q. Was the next batch changed?

A. I don't know; I couldn't say.

Q. That would be outside of your line? A. Yes, sir.

Q. What is a crazed finish?

A. There is no crazed finish; there is what is known as a craze. 2

Q. What is that?

A. That is a fine crack on the face of the enamel.

Q. And what causes that?

A. Well, there are a good many things that might contribute to that. If your casting was extremely heavy at one point and light at another the unequal contraction of that casting when cooling would cause that craze.

Q. In other words, it is necessary to have the casting of an equal thickness?

A. Yes, sir; very near; it is not possible to get a casting of an equal thickness all over, but if the difference is too pronounced that causes a contraction and that causes the craze; you might get a craze from your enamel not being right insofar as it was soft. 3

Q. That is the ingredients of the powder—

A. Would make it too soft; yes, sir.

Q. That might cause a craze, is that right?

A. Yes, sir; it might; a drop of perspiration from a man's arm or his face before that piece of ware gets cooled would cause it to craze. A drop of water of any sort or it being subjected to a strong draft of air before the casting is cooled enough might make a craze. 4

Q. It is necessary then for the casting to be of the same thickness so that it will contract in the same way and expand in the same way all over, is that it?

A. As near as it is possible to get that.

Q. What do you do when you find this craze? Do you call it to the attention of the man who makes the iron?

A. It all depends in my judgment what it is caused from.

If it is caused from the pattern not being in the proper shape, something being wrong with the pattern, I call that to the attention of the management. If it is caused from being subject to too much wind, because the piece was in a position where the wind got on to it, I would call the man's attention to it who was responsible for that.

Q. That is the enameler?

A. Yes, sir; sometimes it is necessary when you find your ware crazing to give the matter very careful attention to discover it.

Q. When you find the ware crazing, you say?

A. Yes, sir; that is it.

Q. It is then necessary to do what?

A. To give the matter close attention until you find the cause of the trouble.

Q. Is it more frequent to have the ware craze than it is to have the egg-shell appearance or porous appearance?

A. Yes, sir; we never have the egg-shell appearance now.

Q. But the crazing you do have?

A. Yes, sir; it does occur, but very rarely.

Q. Suppose you think it is due to the enamel being too soft, then what do you do?

A. I report the matter to the management.

Q. The powder man—that is the mill man? A. Yes, sir.

Q. It is necessary for the powder to expand and contract evenly with the casting which expands and contracts?

A. Yes, sir.

Q. And by saying that the powder may be too soft you mean that the composition of the powder may be such as not to enable it to expand and contract to an equal degree with the casting; is that right?

A. I can answer you this way: The softer enamel gets beyond a certain point, in making the enamel softer the greater the tendency toward crazing; the harder the enamel is made, the greater the tendency is toward chipping; no doubt in your travels you have seen enameled iron ware with a piece chipped off around it.

Q. What causes that?

A. That might be caused by a good many things, but the tendency, the nature of the enamel is to make it more susceptible to either chipping or crazing. The more you harden it, the more danger there is of chipping. The more you

soften it beyond a certain point the more danger there is 1
of making it craze.

Q. Is it not a fact that in the making of this ware the most important factor and the branch of the business that requires the most consideration and accuracy is the making of the powder?

A. Not necessarily; while the making of the powder demands close attention and accuracy the treating of it in applying it to the ware and the different methods and manners of handling it while enameling it is just as essential. The man might have a first class enamel powder; give it to some man who has not the ability to handle it properly dur- 2
ing the process of enameling and he will spoil it. A good first class enameler will make more and better ware out of inferior powder or inferior enamel powder than the incompetent careless man will make out of the best grade of enamel powder you can give him.

Q. You testified that the short-handled dredge was abandoned long before you got the Arrott patent? A. Yes, sir.

Q. That is at the Dawes & Myler Works? A. Yes, sir.

Q. Now, comparing the long-handled and the short-handled dredge, didn't the long-handled dredge relieve the workmen to a great degree of the intensity of the heat? 3

A. Yes, sir.

Q. You testified that as soon as the long-handled dredge was adopted the workman was able to do away with all those protections which you testified he used or wore when he used the short-handled dredge?

A. Outside of one glove and the light apron.

Q. One glove and the light apron? A. Yes, sir.

Q. Those protections he still maintains even with the Arrott dredger?

THE WITNESS: The one glove and the light apron? 4
MR. GROSVENOR: Yes.

A. Yes, sir.

Q. And he also has a protection on one arm?

A. On one arm; yes, sir.

Q. Do you know what weights are used in the castings of the other manufacturers of sanitary enameled iron ware?

A. No, sir.

Q. You are not able to say whether their weights are equal to yours or less than yours or more than yours?

1 A. No, sir; not able to say anything in regard to that matter.

Q. Now, when you used the long-handled dredge, were your turns, that is the hours of work that the laborers were employed, the same as today?

A. No, sir; eventually we did get down to work in three eight hour turns.

Q. On the long-handled dredge?

A. Yes, sir; at present we are working our men on six hour turns.

Q. Then, under the long-handled dredge the hours of
2 labor were longer than they are under the Arrott dredgers?

A. Yes, sir; just at the present time I will state that that is on account of business being slack last fall; to keep our organization together we doubled them up and put them on six hour turns so that we could take care of and give each man an average amount of work.

Q. Before that you had what? A. Eight hours.

Q. With the Arrott dredger? A. Yes, sir.

Q. And when you changed from the long-handled to the Arrott dredger you did not change the hours of work?

A. No, sir; only as the business demanded it; we tried to
3 take care of our men and not lay them off.

Q. Counsel for Defendants, Mr. Noble, said yesterday: "Counsel for Defendants replies that the short-handled dredge was in general use throughout the manufacturing plants of the country when the Arrott dredge was introduced, and has been for some years since the Arrott dredge was introduced." You have given no testimony on that point?

A. No, sir; only you asked me this morning as to how many factories I had been in during recent years and what kind of dredges they used.

4 Q. Just repeat those, now, what ones have you been in and tell about that? A. The Colwell Lead Company.

Q. That was one year ago? A. Yes, sir; in December.

Q. They were using the long-handled dredge?

A. Yes, sir; with a different arrangement of tappers.

Q. But it was supported by a wire? A. Yes, sir.

Q. And the other was the Day-Ward? A. Yes, sir.

Q. When was that? A. Five or six years ago.

Q. And they were using—

A. The long-handled dredge.

Q. That was supported also by the hook and crane? 1

A. Yes, sir; it would be impossible for a man to hold this (indicating Exhibit No. 279) without a support to it.

Q. What other plants have you been in?

A. None outside of the Standard Manufacturing Company's plant, that I can remember, the A. & O. Works in Louisville, and the works in Allegheny.

Q. What were they using when you went over the works at Allegheny? A. The Arrott dredger.

Q. And at Louisville?

A. To the best of my recollection they were using the Arrott dredger. 2

Q. When was that?

A. That was some time shortly after 1901; I could not exactly give you the year, but it was after 1901; either it was in 1901 or 1902, to the best of my recollection.

Q. Are you able to give any more testimony than you gave yesterday as to the comparative periods it took to enamel under the long-handled dredge and the Arrott patent?

A. No, sir.

Q. With the short and the long-handled dredges it took less time?

A. The long-handled—we did not use it for a good many 3 years and I do not remember now.

Q. But when you did away with the short-handled dredge it was considered a decided improvement?

A. Yes, sir; it was a decided improvement.

Q. And the effect was seen in the character of the ware which you produced? A. To a certain extent; yes, sir.

Q. You testified yesterday that respecting the number of tubs produced from the furnaces in an eight hour turn, was it? A. Yes, in ten hour turns.

Q. In ten and twelve hour turns? A. Yes, sir.

Q. Now, why did you select ten hour turns? Don't you 4 use an eight hour turn now?

A. At the time the short-handled dredge was in use and for a considerable length of time after the long-handled dredge was in use, we worked ten and twelve hours; it was only in the later years after the adoption of this long-handled dredge that the turns were reduced to eight hours?

Q. You have never had a ten hour and a twelve hour turn, then, under the Arrott patent, have you? A. No, sir.

1 Q. How can you calculate, then, the number of tubs made in a ten hour period under the Arrott patent?

A. By figuring what they make on an eight hour turn and allowing that they would not make that many, that they would not keep up that average if they were compelled to work more than eight hours; it is necessary sometimes, if a man does not show up, it is necessary to get someone to fill his place. The natural tendency is to secure the man who preceded that man, who is off, to work on the balance of that turn if he can possibly do so, because he is familiar with the furnace and is used to working on it.

2 Q. Suppose we base it on the turns as they are today; the usual turn is eight hours with you? A. Yes, sir.

Q. On an eight hour turn how many high grade tubs can you make?

A. We will make from ten to twelve high grade tubs in an eight hour turn.

Q. In twenty-four hours, then, you would make how many?

THE WITNESS: The same man?

Mr. GROSVENOR: No, three men.

3 A. Well, from thirty to thirty-six; those things vary, Mr. Grosvenor, from day to day.

Q. I suppose all these figures which you gave yesterday were only approximate?

A. They are based on the general work of the men; it is an approximate average.

Q. Taking now the other tubs, that is the guaranteed tubs, how many of those can you make in an eight hour turn?

THE WITNESS: Do we make?

Mr. GROSVENOR: Yes; average, that is.

4 A. About sixteen.

Q. How many in twenty-four hours?

A. From forty-eight to fifty.

Q. And the Competition tub, how many would you make?

THE WITNESS: At present?

Mr. GROSVENOR: Yes.

A. We make anywhere from sixteen to twenty.

Q. Taking these three classes of tubs, the high grade tub

that you testified probably goes through the furnace three times— A. Yes, sir; always. 1

Q. And the guaranteed tub goes how many times?

A. Three times.

Q. Also three times? A. Yes, sir.

Q. And the Competition tub? A. Twice.

Q. Are you familiar with the number of tubs produced in other factories in a six or eight hour turn? A. No, sir.

Q. You couldn't say that that production was anything exceptional?

A. That production is good, as far as I am able to gather from reports, compared with the plants of the factories belonging to our Company; you average or get fifty tubs a day from a furnace, and then you are getting out a good production. 2

Q. That is comparing your factory, the New Brighton and Louisville factories?

A. Yes, sir; as to the other factories, it is merely hearsay. I just hear the men talking from time to time and that is a thing you cannot always rely on.

Q. Yesterday you testified that there had been a change in the manner in which your enamelers got their powder by use of a dummy now; will you explain what a powder dummy is? 3

A. A powder dummy is a square box tapering down—probably eighteen or twenty inches at the top, and tapering down on all four sides to an outlet of about four by eight or something like that, and it is fed mechanically into the dredge.

Q. Of course the enameler only fills his dredge when the tub is in the furnace?

A. No, sir; it is necessary to get some powder while he is still dredging.

Q. How much does a sieve hold? 4

A. As near as I can tell about eight pounds; we use about eight pounds in a dredge.

Q. You mean in one of these two bowls you are talking about? A. No, sir; in a dredger.

Q. Well, upon an ordinary guaranteed tub how much powder do you put, how many pounds?

A. Take a five foot tub, there is more powder goes on a larger tub than on the smaller ones. Take the guaranteed

1 tub, it takes from twenty-five to twenty-eight pounds, to the best of my knowledge.

Q. Does the enameler always fill his bin while the tub stands before him after having once tested it?

A. Yes, he does not empty it, he just runs it down to a certain point and then it is necessary for him to take more enamel into it; if he let it run down until a part of the sieve would be uncovered, then it would just streak out.

Q. You said yesterday, on page 1170 of the record: "The furnace today, at the present time, is kept occupied practically all of the time. Q. How about the days when they
2 enameled by hand? A. A man had to raise his door and let his furnace stand idle for the purpose of going outside to recuperate a little; he did not have a tub in there." Were you referring there to the time that he was using the short-handled dredge?

A. I was referring to the time he used the short-handled dredge and it also applied to the time he was using the long-handled dredge.

Q. When the turns were ten hours?

A. Yes, sir; and at times when they were eight hours yet.

3 Q. As a matter of fact, today the enameler goes outside often when the tub is in the furnace, doesn't he?

A. Yes, sir; he may go outside for a minute or two while the tub is in the furnace, but he always keeps the tub in the furnace?

Q. You produced a sheet showing the percentage of your average losses showing the figures for the last two weeks of January, 1911? A. Yes, sir.

Q. There the percentage averaged about what, do you remember? A. I think 1.8 per cent.

Q. Is that a typical average?

4 A. That is a fairly normal average; it varies; sometime it will be 1 per cent; we have had semi-monthly reports less than 1 per cent; within the last year, we have had them with three per cent; it generally runs about 2 per cent. I would say that a 2 per cent. loss represents our average enameling loss on bathtubs.

Q. When you had your 3 per cent. loss, do you recall what the trouble was?

A. There wasn't any particular trouble at all; the thing fluctuated from one month to another.

Q. What is the chief cause, generally? Are you able to state what it is? 1

A. No, sir; I could not state positively.

Q. Well, approximately?

A. When our loss was 3 per cent. the early part of last year, there was one occasion that I can recall, and that was when I put on half a dozen men who were just breaking into the business, who had been helpers and we found it necessary to put on more furnaces and we took those helpers and put them on there, and naturally the loss would be higher while those men were working on it.

Q. I think you testified on direct examination yesterday that you used more enameling powder than you used to use; have you any figures showing what degree? A. No, sir. 2

Q. How much—have you any idea how much?

A. No, sir; I couldn't say.

Q. It is just your impression, is it not?

A. It is my impression.

Q. Where are your dredgers made?

THE WITNESS: Where are our dredgers made?
MR. GROSVENOR: Yes.

A. We make them in the factory.

Q. Did James Arrott ever work at your factory, or was he at the Allegheny factory? A. He was the Allegheny man. 3

Q. Do you know of any dredgers being shipped within the last year from your factory to any other factories in the United States?

A. I have no knowledge of them being shipped from our factory.

Q. The dredgers there are under your charge, are they not? A. Yes, sir.

Q. So you would know if there had been any?

A. Yes, sir.

Q. Now, as a matter of fact, in the Dawes & Myler factory that short handled dredge had been abandoned long before the Arrott patent came to you? A. Yes sir. 4

Q. This description has been given (reading). That method of tapping applies to the long-handle dredge?

A. Yes, sir.

Q. You had, however, abandoned this short wooden handle of four or five feet? A. Yes, sir.

Q. So that description did not apply to the method in

1 vogue in your factory at the time the Arrott patent was adopted by you? A. No, sir.

Q. Now, this Arrott dredger is a useful tool is it not, in the manufacture of sanitary enameled iron ware?

A. Yes, sir.

Q. And it is a valuable tool in the manufacture of sanitary enameled iron ware? A. Yes, sir.

Q. Is it an essential tool? Now, you know the difference?

A. It is.

Q. Is it absolutely necessary for you to have that Arrott dredger in order to make sanitary enameled iron ware?

2 A. Yes, sir.

Q. It is necessary? A. Yes, sir; in my judgment it is.

Q. Now, you did make sanitary enameled iron ware with this dredge known as Petitioner's Exhibit No. 279?

A. Yes, sir.

Q. Have you a copy of your deposition in the other case?

A. No, sir.

RE-DIRECT EXAMINATION BY Mr. CHRISTY:

Q. Mr. Shield, will you kindly take up that long-handled dredge and hold it in the way which you demonstrated this

3 morning?

(The witness then did as requested).

Q. Now, as I recall it was brought out in the testimony this morning the length of handle between you and that sieve body on the old long-handled dredge was a little more than the length of the handle on Exhibit known as Petitioner's No. 280 which is the Arrott dredger. Was there any object in having a portion of the handle, say about a foot, project beyond your elbow? A. No, sir.

Q. It just went that way?

A. Yes, sir; we sized that up and then we made the third

4 one at that length and kept ordering them at that length.

Q. But that is the position about where the man stood (indicating)?

A. Yes, sir; if they got clean back to the end it made it so much harder to swing that or guide it.

Q. Why?

A. Because it was further away from the support and the end of the dredge.

Q. Then, swinging it was hard work even though it was supported? A. Yes, sir; even though it was supported.

Q. Did it tire the man's arms? A. Yes, sir. 1

Q. Did conditions vary as to the exertions they had to make in enameling?

A. In using this dredge they did, even with this support on it. It was a man's object to get as much powder as he possibly could in that bowl within reason. Then it was necessary for him to help support that weight, because when the powder was beat out and flowed down there that lessened the weight there and the counterbalance being strong it was necessary for him to bear down on this as the amount of enamel ran out of the sieve; the idea was to start with the maximum amount and he would have less time to come 2 away from his tub and come over to the boy and get more powder in.

Q. And besides the exertion of swinging the sieve, the man also had to do some lifting and bearing down during the operation? A. Yes, sir.

Q. Was it an easy matter for him to swing the sieve even though it hung from the counter-weight, using one arm?

A. No, sir; that was one objection to this sieve. That handle was so long that it was hard to swing it around in this manner.

Q. Then the only benefit you got from its use was that 3 the workman was farther away from his tub?

A. Yes, sir; and it made it lighter; he did have to exercise less strength to hold this dredge, up than with the old short-handled dredge.

Q. But he still had some hard work to do?

A. He had some hard work to do.

Q. How about the tapping, was that easier than with the short-handled dredge?

A. No, sir; if anything that was a little harder; the longer the handle the harder you have to strike to vibrate it, but to overcome that we used a heavier tapper on this long- 4 handled dredge than we did on the short-handled dredge, to overcome part of that.

Q. In order to make a good tub the enameler had to make his tappings as rapidly and as regular as possible?

A. It was necessary to make the tappings fast and regular.

Q. And the heavier the tapper the harder it was to do it?

A. Yes, sir.

Q. Did you find any of your enamelers that with either

of the old hand dredges could maintain a regular hard tapping? A. No, sir.

Q. They slowed down toward the end, didn't they?

A. Yes, sir.

Q. And that is what caused the swelling of the wrists which you testified to? A. Yes, sir.

Q. This long-handled dredge gave you an advantage in that you had a larger surface for discharging the enamel?

A. Yes, sir; a larger surface for discharging.

Q. Just to clear up one small point, of course when you changed this table so that the enameler could operate it with his foot, you had to put in a compressed air pipe and connections for turning it? A. Yes, sir.

Q. How many coats did you put on the high grade tubs when you enameled by hand?

A. Four at least and sometimes more.

Q. And how many of the guaranteed tubs?

A. Three, sometimes four, according to circumstances and conditions.

Q. You said at one time in your cross examination that you did very little experimenting with the Arrott dredger when it was adopted?

A. We did not do any experimenting with it when it was adopted.

Q. Then, how did you come to adopt it?

A. I went to the Standard Works in Allegheny; I saw the dredge in operation and I realized the benefits and advantages of it. We just proceeded to adopt it. I presumed the Standard to have done the experimenting.

Q. You just took the results you found there?

A. Yes, sir.

Q. Did they satisfy you? A. Yes, sir.

Q. How did the steadiness with which the men worked with the Arrott dredger compare with that with which they worked with the old hand dredge?

Mr. GROSVENOR: I object to the coupling of the old hand dredges together; the evidence shows that there is as much difference between the short-handled dredge and the long-handled dredge as there is between the long-handled dredge and the Arrott dredger. The question should distinguish between the two. The conditions shown in the evidence are

entirely different. It was shown that with the short-handled dredge the enamelers wore all kinds of protection and with the long-handled dredge he wore none. The question is leading and improper. 1

A. The men worked very much steadier after we adopted the Arrott dredger than they did when we used the hand dredges.

Q. Meaning specifically during the using of the old long-handled dredge? A. Yes, sir.

It was brought out this morning in the demonstration the differences in the way in which the workmen held the Arrott dredger and the way they held the long-handled dredge. There was also a difference in the way they stood; that is, the enameler turned around with one foot in this position and the other foot forward? 2

Mr. GROSVENOR: I object to that as leading.

A. The man with the long-handled dredge never stood still; as we use the Arrott dredger the man stands with his left foot forward and some stand with the right foot forward and the ball of the foot on the fo[illegible]e.

Q. And standing that way th[illegible]ler simply swings his body in the process of enameling the tub? A. Yes, sir. 3

Q. Whereas with the old long-handled dredge the enameler had to be moving around constantly? A. Yes, sir.

Q. I have forgotten whether you said you knew there had been any change in the composition of the enamel after your adoption of the Arrott dredger?

A. I said there had been a change in the composition of our enamel, yes, sir.

Q. But you did not know what it was? A. No, sir.

Q. What was there characteristic of the change which enabled you to say that there had been a change? 4

A. The enamel, after it was applied to a piece of ware, was solid, with a denser white and a higher finish.

Q. Were the grades of powder hard or harder?

A. The enamel itself was harder.

Q. Which fuses the more readily, a hard enamel or the soft enamel? A. A soft enamel.

Q. You have referred to this fork for shifting the tub in and out of the furnace; how heavy is that?

Q. And you don't know what it is?

A. Not always; no, sir.

Q. In regard to distance, the man who handles that Arrott dredger stands exactly as near, if not nearer, to the tub than he did when he used the long-handled dredge?

A. Yes, sir.

Q. That is, with the Arrott dredger he stands a trifle nearer? A. Yes, sir; that is correct.

Q. Now, you said that you never saw a man who was able to keep that tapping movement going through an operation without becoming fatigued?

A. If he is going at full speed.

Q. Do you mean that? A. Yes, sir; yes, sir.

Q. That tub is only out of the furnace a few minutes?

A. It was out with this long-handled dredge more than five minutes.

Q. Are you positive of that? A. Yes, sir.

Q. Sometimes when it was hot and put back again for the second coat it would not stay out five minutes?

A. Not every time.

Q. There is an interval of rest while the tub is in the furnace, is there not? A. Yes, sir.

Q. Do you mean to say that you have never seen an enameler able to move that tapper while that tub was on the table two minutes or five minutes and keep that up regularly?

A. I have neven seen an enameler starting out as fast as they ordinarily start out and maintain that speed and motion; when he comes to the tail of the work his stroke becomes slacker.

Q. Even though it is only out two minutes?

A. Yes, sir; in putting the enamel on the tub.

Q. Does it make a difference whether the tub is out three minutes or five minutes?

A. Certainly; there is a difference.

Q. How many years is it since you saw one of these long-handled dredges operated? A. Ten years.

Q. You have not seen one in ten years?

A. It has been ten years since I saw one in operation; yes, sir.

Q. Your recollection is pretty good for that length of time, is it not?

A. It is a thing that I was with all the time, every day, and saw it hundreds of times a day; I never made a practice

of standing and watching one man to see how much his stroke diminished, but in passing through the factory, I noticed that a man begins to fag at the end of a dredge. 1

Q. Does the force of the tap affect the amount of powder that comes out?

A. Yes, sir; the harder you strike it the more powder you get.

Q. When you take the tub and put the first coat on, do you get more on than on the next time?

A. If you get enough on the first time it is not necessary to put any on the second time, but if you don't get enough on the first time, then it is necessary to put more on the second or third time, as the case may be. 2

Q. If you get more on when you tap it harder than you do when it is tapped lightly may it not be that that lighter tap which you refer to is due to the fact that the enameler does not want so much powder on the tub?

A. In light tapping it is easier to tap for a great length of time and make it regular.

Mr. GROSVENOR: Will you read my question?

The last question was then read by the stenographer. 3

A. Not in every case; no, sir.

Q. May that not be that when the tapping is lighter it is because the enameler wants to get less powder on the tub? You said the amount of powder depended upon the force of the tap?

A. I want it understood that the speed at which he tapped diminished, that it was not as fast; in striking the thing he started up like that (indicating) and toward the end his speed was not as great nor as hard.

Q. Doesn't the speed of the blow have an effect on the amount of powder that comes out? 4

A. The speed of the blow makes it come out more regularly; the speed regulates the flow.

Q. In using the automatic tapper at times you want more powder to come out than at other times?

A. No, sir; the air pressure is regulated according to the amount of powder that the man is using. If it is a little hard to get out through the sieve, he reaches down to the valve and gives it a little higher air pressure.

Q. And then more powder will come out? A. Yes, sir.

Q. Does he go through the enameling of a tub at any time without pressing that button?

A. He has to press this button (indicating button on Arrott dredger, Exhibit No. 280).

Q. When you press that button that relieves the powder and makes it come out? A. Yes, sir.

Q. And when you don't want as much powder, then what do you do?

A. When you are starting on your tub and you want plenty of powder you just pass along in that manner (indicating); the slower you move that dredger over your piece the more powder you will deposit; on the second dredge or coat, if you want to put less powder on there, you just pass your dredger that way (indicating).

Q. That is you pass your dredger more quickly?

A. Yes, sir; when that button is pressed it is simply that you have pressure there or you haven't any—

Q. The automatic dredger is more convenient than the hand dredge, we admit, but is it not a matter of fact on the other hand that the hand dredge has certain advantages and that one of them is that when you want to you can get a smaller amount of powder for a certain place than you can with the automatic dredger? Is not that right? Let me read you this (reading).

Mr. CHRISTY: Objected to by counsel for the Defendants for the reason that cross examining counsel should not attempt to argue with the witness, but ask him his own opinions unaffected by what somebody else may or may not have said.

Mr. GROSVENOR: I am trying to cross examine the witness as to this method of tapping with the hand.

Q. This refers to the Ditheridge patent; did you ever see the Ditheridge pneumatic sieve? A. No, sir.

Q. Do you know if that is used by the J. L. Mott Iron Works, at least owned by them, one of the Defendants in this case? A. No, sir.

Q. You never saw one of them?

A. To the best of my knowledge, no.

Q. Referring to that page, this specification says: "It is difficult and sometimes impossible to stop the flow suddenly. It is difficult to vary and control the force of the blows." Now, referring to the hand tapping, doesn't the

force or the changing of the force of the blows affect the amount of powder coming out? 1

Mr. CHRISTY: The quotation in the last question is objected to as being wholly incompetent, particularly in view of the fact that the concern owning the patent referred to was desperately endeavoring to avoid the Arrott patent and equally as desperately endeavoring to obtain a patent itself.

Mr. GROSVENOR: That is merely a statement of facts. There is nothing like that in the record. Answer the question. 2

A. Yes.

BY Mr. GROSVENOR:

Q. Now, you have testified that you have never used one of these long-handled dredges. It was after you ceased being an enameler and had become a foreman; is not that right?

A. Yes, sir.

Q. Are you able to state still that the diminishing of the force of the hand tapping or the decreasing of the number of the blows may not have been in order to get less powder and not due to exhaustion as you seem to imply in your testimony? A. Generally it was due to exhaustion. 3

Q. Some cases you will admit were due to the fact that the enameler wanted to get less powder on the articles?

A. Yes, there may have been one spot in his tub that the enameler wanted to get less powder on; certainly I will admit that.

Q. Then, it was possible for the enameler to enamel a tub without becoming so exhausted that he could not control the tapping?

A. Well, my opinion is that when a man was done dredging his tub he was tired out for the instant. 4

Q. Just for the instant? A. Yes, sir.

Q. Well, you have testified that he was exhausted before he had completed the dredging; is that what you want your testimony to mean?

A. No, my testimony is, or what I want it to convey, was that there was a perceptible slackening toward the end of the dredging in the number of beats.

Q. But that may have been due to the fact that the enameler wanted less enamel, is not that right?

A. In very few instances; there was a possibility of that being the case at times; yes, sir.

Q. Who is at the head of the manufacturing end of your Company?

A. The head of the Standard Sanitary Manufacturing Company—

Q. Yes, the head of the manufacturing end of the business?

A. Mr. E. L. Dawes is the General Manager of all the factories.

Q. He is the superior of the superintendent of your factory, Mr. McKinney?

A. He is the superior of the manager of our factory, Mr. McKinney.

Q. Do you know Mr. Dawes? A. Yes, sir.

Q. You have been on the stand two days? A. Yes, sir.

Q. Has he been in the court room nearly all the time that you have been testifying?

A. Yes, sir; he has been in here the greater part of the time.

Q. Is he here now? A. Yes, sir.

Q. He has been here during the testimony respecting the exhaustion on the part of the tappers, is that right?

A. Yes, sir.

RE-REDIRECT EXAMINATION BY Mr. CHRISTY:

Q. You say the force of the tapping with the long-handled hand dredge affected the quantity and the flow of enamel, that is if a man hit a hard blow he would get a heavier flow?

A. Yes, sir.

Q. Did all men tap with the same force or with the same uniformity of speed?

A. To the best of my recollection there was no uniformity. One man might be a great deal stronger than another and be able to beat faster and harder.

Q. And one man, then, could get a better flow of enamel than another? A. Yes, sir.

Q. With the Arrott dredger is there any difference between the uniformity of flow of one enameler and another?

A. No, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

JOHN S. JOBE, a witness produced on behalf of the de- 1
fendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. CHRISTY:

Q. Will you please state your age and residence?

A. My age is thirty-four, or I will be my next birthday. My residence is Salem, Ohio.

Q. What is your occupation?

A. General superintendent of the National Sanitary Manufacturing Company.

Q. How long have you been engaged in the manufacture of sanitary enameled ironware? A. About seventeen years? 2

Q. Will you tell us your career in that business?

A. I began in the enameling business with a firm at Braddock, Pennsylvania.

Q. What is the name of the firm?

A. McVay & Walker; then I came to the Allegheny plant for the Standard Manufacturing Company. I worked with the Standard Manufacturing Company, and then went with the Champion Manufacturing Company at Allequippa, Pennsylvania; some called that firm the Champion and some called it the Victor; I believe it was the Victor instead of the Champion. They changed the name of it when I come 3
there. Then I worked for the United States Sanitary Manufacturing Company, at Monaca, Pennsylvania; now I am employed with the National Sanitary Manufacturing Company at Salem, Ohio.

Q. Did you state what your position was with that company? A. General superintendent.

Q. How did you start in with McVay & Walker? What position did you have?

A. I started in as a powder boy at the furnaces.

Q. Then what did you do? A. I was advanced to a forker. 4

Q. And any further?

A. Yes, then advanced to a dredger or enameler.

Q. And you enameled there for how long?

A. For about a month, and then I went with the Standard Manufacturing Company at Allegheny.

Q. When was it that you went with the Standard Manufacturing Company?

A. About 1895, at the time President McKinley was

1 being nominated, because the next year I went to Canton to see President McKinley.

Q. What was your position at the old Standard plant?

A. I applied for a position as an enameler, but I got a position as a helper, because they did not need enamelers. I stayed in that position for about eight months, and then I was put on as an enameler.

Q. How long did you enamel there?

A. For five or six years, to the best of my recollection.

Q. Then you went to Aliquippa?

A. Yes, sir; for a couple of weeks, but I returned to the
2 Standard plant, because the work was too hard at the Aliquippa plant. I was only a young man there. They did not have the equipment that the Standard Company had, and I went back to them.

Q. How long were you with the Standard Manufacturing Company? A. About six years altogether.

Q. What was your position with the United States Sanitary Manufacturing Company?

A. I started in there as an enameler and worked there as an enameler for about six months, and then was appointed to the foremanship. I was a foreman for about a year and
3 was promoted to enamel maker or mixer; that is what it is called. I kept that position until I retired to go with the National Sanitary Manufacturing Company.

Q. When did you go with the National Sanitary Manufacturing Company? A. Three years.

Q. When you went to the Standard plant in 1895, or thereabouts, what appliance or device did they use for applying the enamel to the ware?

A. They used hand sifters, hand sieves.

Q. Will you describe it a little more fully.

A. It was a bowl on a wooden handle with a wire mesh
4 on the bottom, supported by rings and hoops similar to a drum. They had an iron tapper, by which you rapped on this wooden handle to apply the enamel to the ware.

Q. Something similar to this dredge known as the Government's Exhibit No. 278? A. Exactly like that.

Q. That is a good sample of that dredge, as you recollect it? A. Yes, sir.

Q. Did they use that dredge all the time that you were there? A. No, sir, not all the time that I was there.

Q. What else did they use?

A. They invented what they termed the air dredge. 1

Q. About when was that, can you remember?

A. I think that was put in there, to the best of my recollection, about 1899 or '98; I don't recollect exactly the year. It was around that time.

Q. Did they displace the old hand dredge entirely in that way? A. Yes, sir.

Q. Did you personally use both forms of dredge?

A. Yes, sir.

Q. You did? A. Yes, sir; used both forms.

Q. What was this Arrott dredger like?

A. The Arrott dredger was also a bowl made out of 2 aluminum; it was about 10 inches in diameter and three inches in depth—

Q. (Interrupting): Was it substantially like this Exhibit No. 280? A. Yes, sir.

Q. During the time that you were enameler there, and before they introduced the Arrott dredger, did you use the hand dredge similar to Exhibit No. 278 regularly?

A .Yes, sir.

Q. How did you find the work?

A. I found the work very tedious and very hard on my arms and health. 3

Q. What was the trouble with your arms?

A. The weight on the one arm and the tapping with the other, which made me support my wrists with straps.

Q. Which wrist? A. This wrist (indicating).

Q. Are you left handed or right handed?

A. Left handed; that is, I tapped with the right hand; I held up the dredge with my left hand and supported it with the elbow, and this way of supporting it with my hand here (indicating) it bore down on my wrist and caused it to become very weak in there. I was a young man when I began, but I was a healthy man. 4

Q. Were you the only one who suffered in that respect, or did the other men also complain of that?

A. No, sir, the other men also complained of it.

Mr. GROSVENOR: I would suggest that counsel show how much of that was due to the short-handled dredge and how much of it was due to the Arrott dredger.

Q. How did you find the tapping with regard to regularity? A. It was very irregular.

1 Q. How was that?

A. Well, I was considered a speedy man, and I was a young fellow and I worked very rapidly; I would start out and beat it very rapidly, probably going two or three hundred blows a minute, when I started the operation of applying the enamel on the cast iron ware, but when I was through with the tub or the article that I was enameling, I would cease with that regularity that I had been rapping, because my arm would fag out.

Q. About how hot was the tub?

THE WITNESS: About how hot?

2 Mr. CHRISTY: Yes.

A. I judge about 1500 to 1600 degrees Fahrenheit.

Q. Did you protect yourself from the heat? A. Yes, sir.

Q. What did you wear? A. Asbestos gloves or mitts—

Mr. GROSVENOR: I object to that, because the record shows that they were not required by the absence of the Arrott patent. In other words, this could have been done away with by adopting the long handled dredge. There is no direct relevancy between this protection and the issues in this case. In this case they

3 changed from one to the other without the intervening steps.

Mr. CHRISTY: I was lectured a few moments ago for introducing statements of fact into my objections. It seems to me that opposing counsel might be able to state his objections without encumbering the record with argument. Read the witness the question please.

The stenographer then read the last question and answer.

Mr. CHRISTY: And what else, if anything?

4 A. (Continuing): Also an asbestos covered front or jacket and heavy canvas apron.

Q. Did you have anything to protect your face at all?

A. And a mask on my face, with isinglass to protect my eyes.

Q. All bathtub enamelers did that at that plant?

A. Yes, sir; all bathtub enamelers did that.

BY Mr. GROSVENOR:

Q. At that factory?

A. Yes, at the Standard factory at Allegheny. 1

BY Mr. CHRISTY:

Q. Do you know how long it took you to give one coat to an average sized bathtub? A. Yes, I can remember.

Q. About how long?

A. It took me about four minutes to enamel a five foot bathtub one coat.

Q. Did you find that toward the end of the operation the enamel adhered as well to the iron as it did at first?

A. No, the enamel would not adhere.

Q. Did that have any effect on the quality of the ware? 2

A. Yes, it caused us to have a large discount—the other workmen and myself—I had a discount of four or five tubs a day.

Q. Due to bad enameling? A. Yes, sir.

Q. And you were only paid for good tubs? A. Yes, sir.

Q. How many did you enamel a day, on an average?

A. About from twelve to fourteen, if I was feeling good.

Q. Did any other men do that?

A. No, I was the only man who kept up that average of fourteen; there were other men who could produce twelve and thirteen. 3

Q. In how many hours was that?

A. In eight hours work.

Q. How about when the air dredger was introduced; did you work with that from the start?

A. I was the one who experimented on it for J. W. Arrott, Jr.

Q. And when it was used commercially you were the first one who used it?

A. Yes, sir, I was the first one who used it.

Q. Did you find that you could produce more tubs with that? 4

A. I found that I could do my work about 75 per cent. easier than by the hand method, and do more work and better work, and my discount was less and I made more money.

Q. Because you did not have so many tubs discounted?

A. Because I did not have so many tubs discounted, and it enabled me to make one or two more tubs every day in an eight hour shift.

Q. Did you find it difficult to distribute the enamel evenly on the tub with the Arrott dredger?

1 A. No, sir; it was easy to distribute the enamel; in fact, it did it itself; all you had to do was to guide the dredger.

Q. Whereas with the old hand dredge—

A. (Interrupting): You had to carry it over the surface of the iron and rap very hard and very rapidly or the enamel would roll off of the side and drop to the bottom and cause big blisters, buckeyes, I would call them.

Q. That is when using the hand dredge?

A. Yes, sir; because the enamel dropped from the sides to the bottom; I had most of my defects from that.

Q. When you came to use the air dredger, did you find
2 that it was as great a strain on the wrist?

A. No, because I held it in the opposite way. Instead of laying it in the palm of my hand, I just laid it down—held it down.

Q. As you hold a pitchfork?

A. Yes, sir; that strengthened my nerves on the top of my wrist and I could do away with the strap.

Q. Did it cause any great exertion, as compared with the old hand method?

A. No, sir; it did not cause any exertion, and it removed the weight from my back. We had it suspended from a
3 pulley and I had no weight on my back; I had two hands, then, to operate the air dredger with, while with the hand dredge I could not use my hands; I had to apply the enamel while the iron was hot, in order to get a good finish, a high lustrous tub, as the inspector demanded from us, but with the air dredger I could produce in much less time a nice, smooth, high lustred tub, smooth as looking glass, and it did away with the powder dropping from the sides, and I could get the tub back in the oven lots of times while it was still red.

Q. Was there any opposition on the part of the men to
4 that method?

A. The only opposition was that we got a reduction on the price.

Q. Did that reduce your wages any?

A. No, sir; it increased them after the air dredger became in use.

Q. Although you were paid less, you made more?

A. Yes; that is, I did.

Q. And the other men? A. Yes, sir.

Q. What difference, if any, was there between the old

hand dredge and the Arrott dredger in the way the powder 1
was discharged from the sieve bottom?

A. The difference is of such a character that while rapping on the wooden handle of the hand dredge, the flow of powder would be in streaks, and where the rap of the hammer was the hardest, you would get the most powder, a big lump of powder; but around the sides where the rap did not affect it so, you would get a real thin stream, and naturally the tub was covered in spots, heavy and light, and would show a great waviness, like the wind making waves on the river, or like on a wash board; if the powder was not pulverized right, it was a hard matter to cover the tub regularly. 2
But, with the air dredger, there are no streaks. The rap is uniform at the centre, and the rap is uniform at the edge, and the flow continues the same—it is uniform. While the powder is flowing from the Arrott dredger, it flows and mixes at the same time. You deposit it in a long stroke, but with the hand dredge it is not deposited with a long stroke, but falls where you hit the hardest, and it lays there in a lump, and you have no chance to spread it in a long spread. You do not get that smooth effect on the castings or on the surface of the tub, or on the article that is being enameled.

Q. Coming down to the time you were made foreman, how 3
did you find the training of the men? Was it as difficult as in the days of the old hand dredge?

A. No, the training is nothing to speak of, with the Arrott dredger. You do not have to train a man. Any intelligent man, after a day or two days' instructions ought to be able to use the Arrott dredger.

Q. Is that your actual experience? A. Yes, sir.

Q. Have you had any occasion where that was shown?

A. Yes, sir; if the foreman knows his business, he will tell the man before he catches hold of the dredger what to do and how to work it to get that flow from it, and the smooth 4
effect on the casting.

Q. What experience did you have?

A. At the Monaca plant of the United States Sanitary Manufacturing Company, I had the men go on a strike, the enamelers; they wanted pay for all the work and that would not be a proper thing to do. They all struck, and I immediately went to the cleaning room where I had foreign labor employed, and I brought half a dozen men in the enameling room, and I can speak in foreign languages, and

1 I said, "Here, John," or "Mike, do so and so with these dredgers." And inside of a day or two I had them working, and then the old men came back and wanted me to take them back again, but I had their places filled. The strike lasted only two days.

Q. Could you have done that with the old dredges?

A. It would have been an impossibility; I could not do it.

Q. When you take on men in this way, do you have any difficulty in teaching them how to take the tub out of the furnace?

A. No, sir; you have no difficulty showing them that. If
2 a man cannot grasp it inside of one day, he will never make an enameler.

Q. How can he tell how to do that?

A. Whether it is cherry red, or bright red or hot; it depends on how you tell him to take care of his first coat or slush coat. Of course, a man with experience of knowing how to make the enamel can tell the men better. He can tell them how to use it—

Q. Did you grade your enamel?

A. Yes, sir; when I put a new man on, I gave him a certain kind of enamel; I would tell him to get his tub so hot
3 because he would have 100 degrees to go on, and then he would get along all right, if he followed out my instructions.

Q. And there was no more difficulty in teaching them as to the heating of the tub than in the use of the dredge?

A. Not a bit of it.

Q. How does the quality of enamel on tubs of the present day, as applied by the Arrott dredger, compare with the quality of the enamel at the time that the hand dredge was used?

A. The quality of the enamel is of such a character that it makes it absolutely sanitary.

4 Mr. GROSVENOR: I shall ask counsel to specify which enamel he means. Is this the enamel used by the Standard Sanitary Manufacturing Company or the National Manufacturing Company or the United States Sanitary Company.

Mr. CHRISTY: I mean generally, within the experience of the witness.

THE WITNESS: At the present day?

Mr. CHRISTY: Yes, down through all your experience to the present time.

A. Down through my experience the enamel of today is of a better quality. 1

Q. In what way?

A. In its vitreous substance and in its artistic finish.

Q. Is it harder or softer?

A. It is harder than when we used the hand dredge.

Q. Would it have been possible to make it harder with the old hand dredge? Was that a commercial possibility?

A. No, sir; not to make it commercial. If a man bought a tub which was made by applying the enamel with the old hand dredge, he had an enamel which was porous. The softer the enamel is the more porous it is, because there are so many fluxes connected with it; the harder the enamel is the more porcelainous it is, thereby resisting the attacks of the elements, of heat and of hot and cold water. 2

Q. Why couldn't they apply a hard vitreous enamel with the old hand dredge?

A. Because you couldn't get over the surface in time. The scientific principle of enameling is to apply the enamel while the tub is at the hottest degree to which you can bring it; that is when you get the amalgamation of the enamel and the iron, and the first coat is what does it. That is the coat that goes into the iron, while the tub is hot, and the sooner you can apply it the better is the result, the more sanitary is the article, and it will not wear off, and when you take it in the house and bathe in it after six or seven months, it will not lose its finish, and if it loses its finish the pores are left open even into the iron, and that allows the dirt or any other foreign matter to accumulate on the inside of the pores and eat into the iron, makes a place for the germs and makes it unsanitary. 3

Q. And that was characteristic with the old hand dredge method? A. Yes, sir.

Q. But with the present enamel applied with the pneumatic dredger you get a harder surface? 4

A. Yes, sir; we get a more vitreous enamel at the present day that we apply with this pneumatic dredger.

Mr. GROSVENOR: I object to the reference to the old hand dredge, except in so far as it applies to the use of the short handled dredge. He has testified that he never used the other one.

THE WITNESS: I wish to state that this enamel ap-

plies to any kind of enamel which you can put on there and which you rap by hand. You cannot make a good strong vitreous enamel and produce an article such as the trade demands now. They do not only demand the best in quality, but they want it to look beautiful. When a man goes into his bathroom he wants to look upon something beautiful. When we used the old hand dredge, any quality of ware went. The quality demanded then was not as high as it is today.

Q. Did the adoption of the pneumatic dredger lead to a change in the mesh of the sieve?

A. Yes, sir; we changed it to twenty points higher.

Q. What do you use now? A. Sixty.

Q. What did you use?

A. A forty mesh. The reason we can do that is because we can pulverize it more—

Mr. GROSVENOR: I don't want to interrupt you, but are you speaking now of the Standard Sanitary Manufacturing Company or of the United States Sanitary Manufacturing?

THE WITNESS: It was the United States Sanitary Manufacturing Company that I was speaking of.

Mr. CHRISTY: All right.

THE WITNESS: The United States Company is where I introduced this enamel the first time. That is the first place I started to mix it. That is the first place I found out anything about making enamel, although I studied on it before.

Q. Is it an advantage to have a finer grade enamel?

A. Yes, sir; because it makes smoother ware. It fuses more evenly, whereas if you have larger grains it takes longer to spread out during the fusion. It looks kind of rough.

Q. And it is an advantage when you use the harder enamel? A. Indeed it is, and when you use the air dredger.

Q. Do you make the coating of the tub as thick as when the hand dredge was used?

A. At the present time, speaking of the National Sanitary Manufacturing Company—I don't know what they are doing at the other places now—but we do not make the coating as heavy as with the hand dredge. We only apply two thin coats. At the Standard Sanitary Manufacturing Company I

applied three coats of enamel on the tubs that I enameled by the hand dredge. 1

Q. Is it an advantage to have these two thin coats instead of three?

A. Yes, sir; indeed it is. It is an advantage in this respect, in that it gives the enamel more show to fit the iron. This enamel will have a greater tendency to hold to the iron. It will expand more readily and easily. When the tension is on it, it will expand more readily when hot water or cold water is applied.

Q. Did the Standard Sanitary Manufacturing Company change the number of coatings which they used? 2

A. Yes, sir; two coats.

Q. And formerly they had applied three? A. Yes, sir.

Q. That ran through their entire line, did it?

A. Yes, sir; that ran through their entire line.

Q. Suppose you tried to use finely powdered enamel, such as you use now, with the old hand dredge; what would have been the result, if you know?

A. I never tried to use the fine enamel in the old hand dredge; in fact, my opinion is this: If you used the fine enamel with that dredge, it would take longer to fuse it, that is, this vitreous enamel would take longer to fuse. 3

Q. Why?

A. Because it would be on there cold—the tub would be cold; you could not get it on there in time; it would take so long to heat it, and as enamel is a non-conductor of heat, it would be harder to fuse that than the soft enamel. The heat has to come through the iron to the enamel.

Q. When the Arrott dredge was adopted at the Standard plant, did it bring about any reduction in the working force at each furnace?

A. Not to my recollection when I was there.

Q. You don't remember? 4

A. The only time we made a reduction in force when we had the air dredge, was when we got in the powder monkey, as we call it.

Q. And how about the table?

A. We had a man operating the table at the Standard then.

Q. Was any change made in that?

A. Yes, they tried the air table; I was put on the air table and I operated it for about two months.

1 Q. You did that yourself? A. Yes, sir.

Q. Could you have done that conveniently if you had been using the hand dredge?

A. No, it would have been a very hard job to do it and get the work done as you would like to do it. A man would have to do a lot of squizzing around with the hand dredge to find his place and look for the valve and one thing or another. With the hand dredge you must move both feet, but with the air dredge you stand still on your feet and only swing your body. You have both hands to hold on with, and you really have a longer reach, although the handles may be
2 the same identical length, but you do not have to squeeze two feet of it under your arm and hold it with your elbow. You put it in front here (indicating) and you can turn it in front of you. I used to have to wear rubber heels. It hurt my back and side and—

Q. (Interrupting): Did the introduction of the Arrott dredger bring about any difference in the weight of the tubs, in the castings?

A. In my experience, yes; at the plant of the Standard at that time, the five tubs, if I remember right, I was working pretty close to the cleaning house and I could see
3 the tubs going over the scales marked "275" and "285" and when this dredger was introduced, I saw them going over as low as "225" and "235" and "240."

Q. How do the tubs you make at Salem now compare with those made before?

A. At the National Sanitary Manufacturing Company now I have reduced all of the patterns to the minimum weight, and that amounts to about 25 per cent. less than the tubs that I remember at the Standard.

Q. Could you make these light weight tubs commercially with the old hand dredge?

4 A. I suppose with half a dozen coats—

Q. I mean commercially.

A. No, sir; it would not pay to do it. At the National Sanitary plant, this air dredger has enabled me to revolutionize the enameling process.

Q. You have used or have had this air dredger used under you, first at the Standard Sanitary Manufacturing Company, and then at the United States, and then at the National?

A. Yes, sir.

Q. What have you to say of the importance of this Arrott dredger? 1

A. When we first started operations at the National, I spent several thousand dollars trying to get around this Arrott patent, so that I could get a dredger that would produce good ware. I got several of the best dredgers in the country; it was their business to start new shops, and we went to work, but I could not sell that ware. We piled up seconds after seconds, and we got in trouble over it; one jobber said we should treat him the same way we did the other men. I said, "We will have to have this dredger; that is all there is about it," and I got an air turbine and rigged 2 it up and we have been using it ever since, and we applied to the Standard and got them to be lenient with us. Since using this air dredger I have built a new furnace which permits me to do double the amount of work. Formerly, in other plants that I visited or knew about, they could produce sixteen to eighteen tubs on a single furnace with the air dredge. Now, I have invented a double furnace. The tub is heated in one compartment and is completed in another. A man does not have to leave that furnace. He works from six to eight hours—on the smaller articles it is six hours and on the larger it is eight hours—and they turn out as 3 much in six hours on the small ware as they did in eight hours.

Q. Do you know of any other apparatus or tool that would allow you to turn out the ware to the same advantage, so that you could continue in business without this air dredger?

A. If I did know of any I would not pay a cent royalty on this.

Q. Do you know of any?

A. No, sir. My attorneys have turned me down, because I have been working on it, but you cannot produce any air 4 dredger that will not infringe on this patent.

Q. Could you have used your improved furnace with the old way of using the hand dredge?

A. No, sir; it is impossible to get it. I can produce in eight hours thirty-three tubs with this dredger. I would like to see the man who could stand up and use the hand dredge. Why, he would not have any arm on him when he got through.

1 By Mr. GROSVENOR:

Q. Are you referring to the long or the short handled dredge?

A. Either one of them. I would not use that long-handled hand dredge. It is a man-killer; it will kill you in six months. It hurts your wrist and your back and is not fit to use.

Q. Then, is this air dredger a necessity for commercial operation?

A. Yes, sir, it is. I would close the plant down tomorrow if I had to stop it.

2

Mr. CHRISTY: I think that will be all.

Examination Suspended.

At this point the hearing was adjourned until the following morning at ten o'clock.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

3 THE UNITED STATES OF AMERICA,
Petitioner,

v.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

Post Office Building,

Pittsburgh, Pa., February 16, 1911.

4 Pursuant to adjournment the taking of testimony for the Defendants was resumed in the Post Office Building, in Pittsburgh, Pa., on the 16th day of February, 1911, at 10:30 o'clock a. m.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney General.
HARTWELL P. HEATH, Esq.,
MARSHALL A. CHRISTY,
on behalf of the Defendants.

JOHN S. JOBE, a witness heretofore produced and sworn, resumed the stand for continuation of direct examination and testified as follows: 1

DIRECT EXAMINATION BY Mr. CHRISTY (continued):

Q. Are you now making the tubs that you call your double X tubs? A. Yes, sir.

Q. Is that a high grade tub?

A. The highest grade tub we produce in the shop.

Q. About what does the casting weigh?

A. The castings vary in weight according to the size of the tubs we produce; take a five foot three inch rim weighs from 335 to 365; then take a five foot five inch rim, and that will weigh from 400 to 450 pounds. The six foot five inch rim will weigh from 475 to 500 pounds; that has a cast base on the bottom. 2

Q. That is on the tub?

A. That is cast right on the casting; that is what makes it weigh so much.

Q. Would it be possible, in your opinion, for an enameler to enamel tubs of the weight you have given, using the old hand dredge.

Mr. GROSVENOR: I do not want to object to that question except in so far as I think it should be limited first to the short-handled dredge and then to the long-handled dredge; otherwise the record will not be clear. 3

Mr. CHRISTY: You may answer as to both forms.

THE WITNESS: Answer as to both forms?

Mr. CHRISTY: Yes.

THE WITNESS: You mean this double X tub?

Mr. CHRISTY: Yes.

A. In my opinion I could not get a man at the present day to enamel this bathtub inside and outside by either the short-handled or the long-handled hand dredges; it is impossible to produce this tub with those hand dredges. 4

Q. What have you to say as to the comparative trade standards of bathtubs in 1898 and today?

Mr. GROSVENOR: That question is too broad; are you referring to the bathtubs of the Standard Sanitary Manufacturing Company or the United States Sanitary Manufacturing Company or the National Sanitary Manufacturing Company or all bathtubs in the trade?

1 Mr. CHRISTY: I mean tubs that would be acceptable to the trade generally?

A. In my opinion I would judge that the standard of the tubs today produced by the Arrott dredger are about 75 per cent. better in quality than they were when produced by the old hand method of applying the enamel.

Q. Will the trade today generally accept the tubs of the quality produced in 1898 as commercially good quality tubs?

A. The jobber of today will accept it as a B quality tub, but not as a first A grade quality or a five year guaranteed or a two year guaranteed tub.

2 Mr. GROSVENOR: I want to object to this until counsel shows this witness has some acquaintance with the jobbing trade. You have not shown that he has anything to do with the distributing end of the business.

Mr. CHRISTY: Possibly I should have left these inquiries for some other witness, but understood from a portion of the direct examination of this witness that he was familiar with the trade.

Q. Will you please state, Mr. Jobe, what was your familiarity with trade conditions and your observation of 3 the commercial quality of tubs in 1898, and what opportunities you have since had to be familiar with the trade?

A. My observations are from the inspector's report that I receive daily on my production by hand-dredging and also from the reports of my work that the inspector handed to me, by the air-dredger; and the quality I am familiar with that I produced at that time with the hand dredge and what I produce now with the air dredger. The quality which I produce today at our factory, that is, the supervising of the production of this article and from the amount of ware we have returned and the complaints we get as to the quality 4 or the ware—from these points I gather how the quality and inspection of the work must be.

Mr. GROSVENOR: Counsel has not shown that he has had any experience with the distribution of the ware or the selling of it in 1898.

Mr. CHRISTY: That will be all.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. You said you went with what company, first?

A. I began operations with the McVay-Walker Company 1
of Braddock, Pennsylvania.

Q. How long were you there? A. About a year.

Q. What year was that? A. About 1894 or early in '95.

Q. What form of dredge were they using at that time?

A. A hand-dredge, a short-handled hand dredge.

Q. Like Petitioner's Exhibit No. 278? A. Yes, sir.

Q. The whole weight of that was carried in the hand?

A. Yes, sir.

Q. There was no suspension from above? A. No, sir.

Q. And from there where did you go?

A. To the Standard Manufacturing Company in Alle- 2
gheny.

Q. And you became there what? A. A table man.

Q. You applied for the position of an enameler?

A. Yes, sir.

Q. And there was none open? A. No, sir.

Q. For how many months?

A. Oh, six months, I suppose, as well as I remember now.

Q. This was the Allegheny factory? A. Yes, sir.

Q. This was in what year?

A. About '95, if I recollect right, or '96.

Q. Did you use this same short-handled hand dredge 3
there?

A. Yes, sir; identically the same.

Q. Until the Arrott dredger was installed in 1899?

A. Yes, sir.

Q. Have you ever been down to the New Brighton factory?

A. Yes, sir.

Q. During those five years? A. No, sir.

Q. Did you know at the time you were working at Allegheny that the New Brighton factory was using the long-handled dredge? A. No, sir.

Q. Using this short-handled dredge at Allegheny you had 4
these protections which you described yesterday; is that right? A. Yes, sir.

Q. At that time had you seen the long-handled hand dredge in operation there? A. No, sir.

Q. Did you know that where the long-handled dredge was in use the workman did not require or use the protections used by yourself and the other men using the short-handled dredge? A. I had not heard of it.

Q. At that time?

A. Yes, sir, when I was enameling at the Standard Manufacturing Company.

Q. During the time that you were at the Allegheny plant prior to the introduction of this Arrott dredger, was there any counterweight to hold up the weight of the dredger?

A. No, sir.

Q. When was that first installed?

A. When the air-dredger came in, only on bathtubs.

Q. Well, for the small articles they do not use the heaviest dredger; don't they use a smaller dredger?

A. They use a dredger eight inches in diameter and six inches in depth for the small articles.

Q. That is smaller than the one used for the bathtubs?

A. Yes, sir.

Q. When the Arrott dredger was put in, that is when the first counterweight was put in also? A. Yes, sir.

Q. Was the counterweight used for the manufacture of any articles prior to the introduction of the Arrott dredger?

A. No, sir, not to my knowledge.

Q. Did you know that for four or five years before the Arrott dredger was installed at the New Brighton plant the long-handled dredge was supported by a counterweight such as you used with the Arrott dredger? A. Just from hearsay.

Q. Was that hearsay at that time or since?

A. No, at that time.

Q. You had understood at that time that the dredger was supported at the New Brighton plant by counterweights?

A. I had heard of it, but I did not know exactly whether it was so or not.

Q. Had you heard that the dredger employed at the New Brighton plant was the long-handled hand dredge?

A. Just from hearsay, I didn't know it.

Q. Then you had heard of the long-handled hand dredger?

A. About two years after I was at the Standard I heard of some plants, particularly the New Brighton plant, using the long-handled dredge on bathtubs.

Q. And that that was supported—

A. By a counterweight.

Q. Was any effort made to install such a dredger at the Allegheny plant? A. Not to my recollection.

Q. This dredge, Exhibit No. 278, is like the old hand dredge you used at Allegheny?

A. Only the handle was heavier; it was an old sledge handle. 1

Q. Made of wood? A. Yes, sir.

Q. Was it about that weight (indicating)?

A. Yes, sir; I judge it was about this weight.

Q. Now, take this Exhibit No. 280; was the Arrott dredger about that weight? A. Yes, sir.

Q. That is several times heavier than Exhibit No. 278?

A. Precisely so.

Q. The handle being of iron? A. Yes, sir.

Q. And the chief difficulty with this short-handled dredge was the fact that the weight was all supported in one hand, was it not? A. No, sir. 2

Q. What was the chief difficulty? A. With the rapping.

Q. The rapping? A. Yes, sir.

Q. Did you find the weight objectionable?

A. To a certain extent, yes, sir.

Q. Where is the larger part of the weight of this Arrott dredger held?

A. On the bowl of the dredger which is suspended.

Q. In other words, the rope or chain supports the main weight of the dredger?

A. Well, it supports about one-half of the weight and you support the other half with your hand. It is not always counterbalanced. It depends on the amount of enamel you have in the bowl of the dredger. Sometimes it will fly way up in the air if you do not hold it, and at other times it has a tendency of going down when you overload it. 3

Q. How long did you say you were at the Standard?

A. About six or seven years, as near as I can remember.

Q. And then you went where?

A. To the United States Sanitary Manufacturing Company at Monaco, Pennsylvania. 4

Q. Were you an enameler all the time that you were at the Standard? A. Yes, sir.

Q. You started with the United States Sanitary Manufacturing Company in 1902?

A. I was not always an enameler at the Standard; I came there as a helper for about six months.

Q. But you were not a foreman? A. No, sir.

Q. Your duties were confined to enameling?

A. Yes, sir.

1 Q. You did not study at that time the powder?

A. No, sir.

Q. When did you start with the United States Sanitary Company?

A. When they began operations; I don't know exactly whether it was exactly 1902 or—

Q. And you stayed with them until you went with the National Sanitary Manufacturing Company? A. Yes, sir.

Q. During all the time you were with the United States Sanitary Manufacturing Company you used the Arrott patent, didn't you? A. Yes, sir.

2 Q. Was that Arrott patent used throughout the factory?

A. Yes, sir.

Q. And when did you leave the United States Company?

A. About three years ago, in 1908, I think.

Q. Have they always used the Arrott patent as far as you know? A. Yes, sir.

Q. Do you know whether that was by contract?

A. No, sir.

Q. You don't know on what terms it was used?

A. No, sir; I never inquired; it was not my business.

Q. You don't know whether a royalty was paid?

3 A. No, sir.

Q. Or whether the shop rights were bought outright?

A. No, sir.

Q. You don't know who handled that end of the business? A. No, sir.

Q. You were promoted to be a foreman of the enameling department at the United States Company after a while?

A. Yes, sir; at the cleaning department—

Q. And that means the polishing out of the tub?

A. No, sir, that means the cleaning out of the casting for the enameling process.

4 Q. You took the tub after it was cast and by the application of emery wheels and a sandblast you polished it and made it ready for the enameling?

A. Yes, sir; I had charge of that.

Q. Did you have charge of the molding room?

A. No, sir; not at the United States Sanitary.

Q. Did you have charge of the mill room at the United States Sanitary Company? A. Yes, sir.

Q. That is the making of the powder? A. Yes, sir.

Q. About how long were you in charge of that?

A. Four or five years, as I remember. 1

Q. Did you start in there as a helper at first?

A. No, sir.

Q. At that time you gave up the enameling end of the shop business, did you?

THE WITNESS: Do you mean the foremanship or what?

Mr. GROSVENOR: Yes.

A. No, I was still foreman.

Q. Then you had charge of these three things?

A. Yes, sir. 2

Q. Who was your superior at this time?

A. Mr. A. E. Arrott and C. F. Arrott.

Q What positions do they hold in the company?

A. President and general manager.

Q. Who was the general manager?

A. A. E. Arrott.

Q. He was the man who ran the factory?

A. He was the man who was manager.

A. At the factory? A. Yes, sir; or of the company.

Q. Where had he been before that?

A. The Standard Manufacturing Company. 3

Q. When you were in the mill room did you have charge of the making of the powder? A. Yes, sir.

Q. Did you determine the composition of the powder?

A. Yes, sir.

Q. And the proportions of the various ingredients which go into the powder? A. Yes, sir.

Q. Had you studied this matter before you went into the mill room? A. Yes, sir.

Q. Where did you study it? A. At home.

Q. You took books on chemistry and the making of glass? 4

A. Yes, sir.

Q. And you gave a great deal of study to it?

A. Yes, sir.

Q. Did you make some changes in the powder after you went into the mill room?

A. Yes, sir; that is a change from the company's powder what the company had used.

Q. You made certain changes in that?

A. I made my mixes which I considered best for the

enameling purposes at that time with the operation, with the air dredger. I do not know what the company's mixes were at that time.

Q. You had been with the United States Company for several years before you went in there, hadn't you?

A. No, sir; I was employed just about a year before I took charge of the mixing room, as near as I can recollect.

Q. For a year, then, you were working for the United States Manufacturing Company in the factory enameling and using the Arrott patent?

A. Partly enameling and partly as foreman.

Q. This was before you went into the mill room?

A. Yes, sir.

Q. You never knew of any other dredger except the Arrott being used at the United States, did you?

A. No, sir.

Q. You say then you made the powder when you went in the mill room?

A. I made my powders, but the company gave me their formula.

Q. And you thought yours the best?

A. Yes, sir; and the company recognized it as being superior to their own.

Q. In what way was it better, more vitreous?

A. Yes, sir.

Q. That is, it was harder?

A. You can call it that; vitreous means porcelaineous, solid body, non-porous; it can be vitreous and not be hard.

Q. Until you went into the mill room of the United States Manufacturing Company you had not taken part in the making of the powders, had you, either at the Standard or at the United States? A. No, sir.

Q. You had not changed the powders in use from time to time, had you? That is, I mean you personally; that was not your duty, was it?

THE WITNESS: At the Standard or the United States?

Mr. GROSVENOR: At the Standard.

A. I had nothing to do with the powders at the Standard.

Q. Nor at the United States until you went into the mill room, is that right? A. Yes, sir.

Q. When you went to the National Manufacturing Company in Indiana, is that right? 1

A. It is not Indiana; the National is in Salem, Ohio.

Q. You became the general superintendent?

A. Yes, sir.

Q. Who are your officers there?

A. F. G. Borden, president; and D. W. Davis, secretary and treasurer.

Q. Do they reside at Salem, Ohio?

A. D. W. Davis resides at Salem; Mr. Borden lives at Grafton, West Virginia.

Q. Are they active in the business? 2

THE WITNESS: In the general business?

Mr. GROSVENOR: Yes.

A. Yes, sir; they are active.

Q. What are the duties of Mr. Davis?

A. He is the secretary and treasurer.

Q. He looks after the selling end of the business?

A. Yes, sir.

Q. And you look after the manufacturing end, is that right? A. Yes, sir.

Q. How old is that company? 3

A. Going on three years.

Q. You went with them at the start, did you?

A. I started them in the operation of making sanitary cast iron porcelain enameled ware.

Q. Do you mean that they opened their factory at that time or that you simply brought this one additional factor into their business?

A. I supervised the building of all the equipment in that factory for the manufacturing of this sanitary enameled iron ware.

Q. Was the National Manufacturing Company in existence prior to that time? 4

A. They were not in existence prior to that time.

Q. Now, what sort of a dredger have you been using at the National Sanitary Manufacturing Company?

A. The pneumatic dredger.

Q. You started with the pneumatic?

A. No, sir; the hand-dredge.

Q. What sort? A. The short-handled.

Q. Like this (indicating)? A. Yes, sir.

1 Q. Supported by any counterweight? A. No, sir.

Q. Did you make any attempt to install this long-handled dredge? A. No, sir.

Q. Or to install any counterweights to support your hand dredge? A. No, sir.

Q. Had you ever seen such a device?

A. Yes, sir; at the Iron City Manufacturing Company's Zelienople works.

Q. Did your men wear the protections at Salem, Ohio, as you described them as being used?

A. Some of them; yes, sir; not any more than what
2 they wear today with the air dredger.

Q. Well, had there been improvements in this short-handled dredge since you used it? A. No, sir.

Q. How long did you use the hand dredge?

A. Not very long; about two weeks; we could not produce salable ware by it and we discarded it.

Q. Where did you get your men from?

A. Well, I picked them up through the country; they applied for positions.

Q. Had any of them worked as enamelers before?

A. Yes, sir.

3 Q. Then, what did you do?

A. We started to experiment on a mechanical dredge, a steam dredge, electric dredge and anything else just to get around the Arrott patent; the reason we did not adopt the Arrott patent at once was because we were afraid of infringing, but we could not get around it successfully—

Q. Whom do you mean by "we?"

A. The National Sanitary Company.

Q. What else did you try besides the short-handled dredge?

A. An electric dredge operated by an electric motor
4 with a little rod and knocker.

Q. About how long did you experiment this way?

A. About two months.

Q. And then what did you do?

A. Adopted the pneumatic dredger.

Q. The Arrott dredger? A. Yes, sir.

Q. Where did you get one? A. Made it.

Q. You made it yourself?

A. Yes, sir; I am perfectly familiar with the construc-

tion of dredges because I made them at the United States plant. 1

Q. Is the output of the National very large?

A. Yes, sir.

Q. It is considered one of the small factories in the trade, is it not? A. No, sir; not so very small.

Q. Did you take part in the negotiations which resulted in the National Sanitary signing a license agreement with Mr. Wayman, one of the defendants in this suit?

Mr. CHRISTY: Objected to as improper cross-examination. 2

A. I don't know of such negotiations; it was not my business to go into the details of that sort; my business was to run the factory and not the executive part of the business.

Q. You did not attend any meetings on behalf of the National Sanitary Manufacturing Company?

A. No, sir.

Q. Anywhere? A. No, sir.

Q. Did you know the matter was being discussed?

A. I heard of it.

Q. When did you hear of it? 3

A. Early in 1910, the early part of 1910.

Q. In May? A. I suppose it was around May or June.

Q. That is after they had signed the contract?

A. Well, I could not say whether it was after the signing of the contract or before the signing of the contract.

Q. Who told you about it?

A. Well, it was discussed in the office of the National Sanitary Company by its officials.

Q. What officials?

A. The president and secretary and treasurer.

Q. After May, 1910, did you make any changes in the character of the dredges which you were using in your factory? 4

A. I made a change for the pneumatic dredger in my enamel mixer.

Q. Did you make the change in the mixer or in the dredger?

A. In the mixing of the enamel for the Arrott dredger.

Q. I thought you said that for two years you were using the Arrott dredger?

1 Q. Yesterday, describing this hand dredge you say: "I held up the dredger with my left hand and supported it with the elbow, and this way of supporting it with my hand here (indicating) it bore down on my wrist and caused it to become very weak in there." That was using the hand dredger without a support, is that right? A. Yes, sir.

Q. That is, without being suspended from the ceiling?

A. Yes, sir.

Q. Have you ever tried using the long or short dredger suspended from the ceiling? A. I tried it, yes, sir.

Q. Which did you try, the long or the short?

2 A. Well, I tried the short-handled.

Q. When did you try the long-handled?

A. I cannot state, but it was in the meantime while I was using this dredge.

Q. When did you use both?

A. I cannot tell that exactly; I gave them a trial.

Q. When did you try the short-handled dredge in that way?

A. I cannot say; it was during the three years that I was using the hand dredge.

Q. It was while you were with the National Company?

3 A. It was while I was with the Standard Manufacturing Company at the Allegheny Works.

Q. It was before the time of the Arrott patent?

A. Yes, sir; I tried it one day.

Q. You tried suspending the short-handled dredge on the weight for one day?

A. I suggested it to the foreman; my wrist was getting too weak and I thought I would have to give the job up, and I suggested one day to the foreman to let me try a suspension, but I could not control it.

Q. When did you try using a suspension on the long-

4 handled dredge?

A. I never tried that; it was suggested to me, but I would not use it.

Q. You never tried it? A. No.

Q. Who suggested it to you? A. The foreman.

Q. Where?

A. At the Standard works, at the Allegheny works.

Q. Before the Arrott patent? A. Yes, sir.

Q. You had heard of the long-handled dredge while you

were at the Allegheny plant? A. I had heard of its being 1
used.

Q. Did any of the enamelers use the long-handled dredge at Allegheny while you were there? A. No, sir.

Q. Did this foreman who asked you to use it have any arrangement to suspend the weight from the ceiling?

A. No, sir; he just heard of it also.

Q. When the Arrott patent was introduced you suspended it from the ceiling? A. Yes, sir.

Q. You say you were present with Mr. Arrott, the inventor of this patent, in making the tests on this dredger?

A. Yes, sir. 2

Q. Were you present when any tests were made with the counterweights?

A. No, sir; that was Mr. Arrott's suggestion; he suggested suspending it. That was the time the enamelers had a sort of grievance because we were going to get our wages reduced, and of course we tried to pick that thing all to pieces, said that it was too heavy and could not be controlled, such as men generally get up when the wages are to be reduced, but there was no ground for any of those complaints.

Q. But as the result of those complaints this counter- 3
weight was thought of? A. Yes, sir.

Q. And that relieved you of a great weight?

A. Of the greater part of the weight.

Q. Of the Arrott dredger? A. Yes, sir.

Q. If you had had a counterweight established on the long-handled dredge would that have relieved you of a greater part of the weight? A. No, sir.

Q. Why not?

A. You would still have supported it under your elbow while the Arrott way you hold it with both hands.

Q. Have you ever tried the long-handled dredge with the 4
counterweights?

A. No, sir, I refused to try it.

Q. Was that after the Arrott dredger?

A. No, when I saw the counterbalance work I would not try it. It took the control away from me. I could not make my full wages.

Q. Let me get at that in another way. I do not think I understand your testimony. When was it that you refused to use the long-handled dredge with the counterweights?

1 A. When the foreman suggested to me that I should try it.

Q. When was that suggestion made? Was it after you were using this counterweight on the Arrott dredger?

A. No, it was after I experimented a day with the short-handled hand dredge to suspend it. I said, I do not care for that; it takes the control out of my hands, and I cannot do the work satisfactorily.

Q. And you refused to try it? A. Yes, sir.

Q. Do you know that the long-handled dredge has been in successful operation in a number of plants throughout
2 the country? A. No, sir.

Q. Have you seen it at the Iron City works?

A. Yes, sir; I seen the enamelers working it; when I was using the Arrott the Iron City offered me employment as mixer, and I seen them using this long-handled dredge. I don't know if it was as long as this one, but I knew that it was longer than the Arrott dredger that we used at Monaca.

Q. And did the men there use these protections that you used?

A. With bathtubs I saw some using masks on their face and asbestos gloves and aprons.

3 Q. When was this?

A. That was the time I was employed with the Arrott, in 1904 or 5; I cannot recall exactly.

Q. But the handle they were using was longer than that on the Arrott dredger?

A. Yes, sir; it looked so to me; of course, I was not way up to the man, but stood 25 or 30 feet away from him and I never thought of that.

Q. After you began using the Arrott dredger did you make any change in the way that you took the tub out of the furnace? Do you understand my question? A. No.

4 Q. Well, you testified yesterday that when you take the tub out it is about what degree under the old method, fifteen or sixteen hundred degrees Fahrenheit? A. Yes, sir.

Q. What temperature does it have when you take it out now?

A. I should judge fourteen or fifteen or sixteen hundred.

Q. Just about the same? A. Just about the same.

Q. If any of the witnesses for the defendants testified that after the introduction of the Arrott patent It was un-

necessary to heat the tubs to the same degree of temperature as before the Arrott patent, would you disagree with him? A. I would disagree with him. 1

Q. Now, you said that with the Arrott patent you applied two coats, is that right? A. Yes, sir.

Q. To all your tubs?

A. Yes, sir; high grade tubs we applied three coats, and also five year guaranteed tubs.

Q. Yesterday you testified that you applied two to all, did you not? A. I may have said so; yes, sir.

Q. Have you had any conversation with Mr. Dawes since you were in this room? A. No, sir. 2

Q. Or with any of the counsel for the defendants?

A. No, sir.

Q. When you used the short-handled dredge you say you applied three coats? A. Three coats; yes, sir.

Q. Then you apply the same number of coats today?

A. No, sir; only on some tubs where it is necessary, such as a five-year guaranteed tub, a six-foot length with five inch roll on it that weights about 450 pounds; and when we want to get a high artistic finish to it; we did not make those tubs at that time.

Q. Yesterday you testified that you made from 12 to 14 tubs in a turn at that time? A. Yes, sir. 3

Q. And you were discounted four or five tubs a day, is that right? A. From three to five tubs a day; yes, sir.

Q. And you were not paid for them? A. No, sir.

Q. You then lost from 25 to 30 per cent. a day?

A. Sometimes that much; I would not get paid for them; they would be B quality tubs.

Q. Do you know Mr. Shield who testified yesterday?

A. No, sir.

Q. He testified that while he was using the long-handled dredge at New Brighton the loss was about 8 per cent.? 4

A. That is in the general production.

Q. In the production of the tubs?

A. I don't know anything about that; I am talking of my experience as an enameler.

Q. If Mr. Shield was producing under the long-handled dredge and losing 8 per cent., and you were using the short-handled dredge with a loss of 25 to 30 per cent., would you draw the inference from that fact that his plan was the more efficient?

1 A. No, sir; I was in too big a hurry; I did not take as great care as the others; I was a reckless enameler, because I was always in a hurry.

Q. Weren't you the best enameler or one of the best there?

A. I was a good one.

Q. This loss of yours was excessive, then? A. Yes, sir.

Q. And didn't the other enamelers have losses too?

A. They did, but theirs were less, and they made less tubs.

Q. They made fewer tubs?

A. Yes, sir; ten or twelve, and exercised more care.

2 Q. Mr. Shield testified that under the Arrott dredger his loss was 2 per cent.; what was your loss at the Standard?

THE WITNESS: As an enameler?

Mr. GROSVENOR: Yes.

A. My loss was cut down to about two tubs a day.

Q. How many did you make?

A. From fourteen to fifteen and as high as sixteen, some days, when I was feeling well. Some days I would not have any bad, if I exercised great care; it all depended on the enameling, as far as the loss went.

3 Q. How many tubs did you try to enamel with the hand dredge suspended by a weight?

THE WITNESS: I, myself, personally?

Mr. GROSVENOR: Yes, at the Standard?

A. I tried about two bathtubs.

Q. You tried about two bathtubs? A. Yes, sir.

Q. And you refused to try any by the long handle?

A. I refused to try any with that suspended operation; I refused to use it because I did not think it could be done successfully.

4 Q. But you refused to try the long-handled dredge?

A. Yes, sir.

Q. Mr. Shield testified that it required a good deal of care and judgment to decide when to take the tub from the furnace?

A. It may in his plant. It depends on the quality of the shell coat and the mixing; in my plant or in the National plant it is different; I am the mixer and I produce the enamel in the proper degree for applying it.

Q. You consider the slush coat a very important matter? 1
A. Yes, sir; very important.
Q. It is considered as of more importance than the other coats? A. No, sir; but just as important.
Q. How do you apply it?
A. Just pour it over and then make it uniform.
Q. Have you made any changes in the ingredients of your slush coat since you were with the United States?
A. Yes, sir.
Q. And while you were with the United States did you make changes?
A. Yes, sir; that is necessary because of the different de- 2
grees of iron that you receive from the foundry.
Q. The iron differs? A. Yes, sir.
Q. And you make different kinds of slush coats from time to time? A. Yes, sir.
Q. Did you analyze the iron?
A. I analyzed the iron for the Cupola.
Q. Did you analyze the iron after it came out of the cupola?
A. No, sir; I keep a certain point of silicate between the iron and the first point and the enamel.
Q. And those are matters which require important study? 3
A. Yes, sir.
Q. They are the most important matters in the business?
A. Yes, sir.
Q. That is the composition of the slush coat and the powder?
A. The composition of the iron alone; the composition of the slush is secondary and also the enamel.
Q. Then the composition of the iron is the most important?
A. Yes, sir; and then comes the slush and the enamel.
Q. Because if the iron is not right you cannot apply the 4
enamel properly?
A. You can apply it but not properly.
Q. Why is it so important?
A. Well, that is my stock in trade.
Q. In fact, that is the chief secret of the business, is it not? A. Yes, sir.
Q. The components of the enameling powder are the same components largely as enter into the making of glass, is not that right?

1 A. Well, no, they are not. There are only very few articles that enter into my mixture that go into the mixture of making glass.

Q. And your mixture is different from what they had at the United States Manufacturing Company?

A. Yes, sir; I did not have the charge of the mixing of the iron at the United States Sanitary; I have that at the National; I am the only authority on that question. What I say about that goes. I have the say as to the iron and the mixtures, and I have the say as to the patterns.

Q. That requires a great amount of care too, does it not?

2 A. Yes, sir; but it is not as important as the other. If the pattern is not right it will expand or contract a certain degree. Then you arrange your slush and your enamel to meet that expansion or contraction and then have a plan by which the enamel can be applied to the metal. If you have a quick device for applying that enamel to the metal while it is in a glowing state you get the best results. If you do not have a quick device for applying that enamel to the iron, then you do not get the amalgamation of the enamel or the slush coat to the iron. If you do not cover that iron very rapidly it kills on you and the atmospheric action

3 will cause a superficial layer of oxide, which is detrimental to the amalgamation.

Q. How long does it take you to apply a coat?

A. We have enamelers who can apply it in a minute or a minute and a half. Some take two minutes. It depends on the enameler's ability, of course.

Q. Respecting this question of the weight of castings, your knowledge of the weight of the castings at the Standard at the time you were there was confined to those observations of the weights at a distance; you testified yesterday that you used to see the weights marked to 275 and sometimes to 285,

4 and then when the air dredger was introduced you saw them going as low as 225 and 235 and 240? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. You make heavier tubs than the 285?

A. I testified to a five foot, didn't I?

Q. Are you referring to yesterday's or today's testimony?

A. Yesterday's.

Q. Are you familiar with the character of the output produced by the other manufacturers, or are you just con-

fined to this factory? A. Only from when I see their ware. 1

Q. Where do you see their ware?

A. On the market, in the jobbers' show-rooms.

Q. Do you make a practice of selling the ware, or is that left to Mr. Davis and Mr. Borden?

A. That is left to Mr. Davis and Mr. Borden. I make a practice of visiting the jobbers and looking up what the other people are manufacturing.

Q. Mr. Jobe, will you please produce at the next hearing this correspondence to which you have referred in your testimony between your company and the Standard Sanitary Manufacturing Company respecting the use of the dredger 2 at your place, and which you say you saw?

A. I will ask Mr. Davis for it.

Q. I wish you to bring it, and if you cannot bring it to appear and state on the record why you haven't got it?

A. All right, sir.

Q. Is the formula which governs the preparation of your enameling powder a State secret which you would decline to make known to other manufacturers?

A. I certainly would decline.

Q. And the formula for the making of your slush coat?

A. Yes, sir; I would not tell anybody that. That is my 3 stock in trade. That is the only thing I have got to make my bread and butter on.

Q. And also your various analyses respecting the iron and the experience which you have gained from the study of the iron? Is that a matter which you would decline to reveal to outside manufacturers?

A. That is the most important of all, the iron base. If you have not got that right, the other part is all wrong. I certainly would decline to give that out.

Q. Those are the three things?

A. Yes, sir; those are the three things that are my stock 4 in trade. I would like to do it, but I cannot.

RE-DIRECT EXAMINATION BY MR. CHRISTY:

Q. I suppose when you testified yesterday, Mr. Jobe, as to the essential importance of this automatic dredger you had in mind what you have said this morning as to the importance of your secret mixtures of enamel and slush coats and the iron base? A. Exactly.

1 Q. Then, assuming that you have what you consider to be perfection as regards analyses of your iron, the proper mixture of your slush coat, and the proper mixture of enamel, I understand equipped with all those, nevertheless the testimony which you gave yesterday as to the importance of the automatic dredger is true and correct to the best of your knowledge and belief? A. Yes, sir.

Q. When you testified yesterday that now you only apply two coats of enamel to your tubs instead of three, do you mean tubs of the same grade?

THE WITNESS: As applied with the hand dredge.

2 MR. CHRISTY: Yes.

A. Yes, sir.

Q. You did not mean that to include high grade and guaranteed tubs?

A. I never made any five year tubs or guaranteed tubs at the Standard.

Q. That is by the use of the hand dredge?

A. By the use of the hand dredge; there were other enamelers that made the high grade ware there; there were other enamelers that made a different class of tubs. I made

3 the two year guaranteed.

Q. What was the reason that you declined to use the long-handled suspended dredge?

A. I found it would be harder work for me. I found that I could not control the ones I tried.

Q. What do you mean "to control?"

A. The swinging of it. It was too hard to control the one that I tried.

Q. And you found that out? A. Yes, sir.

Q. When you used the short one? A. Yes, sir.

Q. You said the chief difficulty in the use of the hand

4 dredge was in the rapping? A. Yes, sir.

Q. What did you mean by that?

A The tapping on the handle with the iron rod.

Q. Did enamelers learn that easily?

A. No, sir; they did not; it required pretty good skill to get on to that; it was hard to get the flow of enamel as regularly as it could be done, that is, by hand.

Q. That was difficult?

A. Yes, sir; it was the most difficult—the holding of the dredge was not hard to learn.

Q. That was merely a matter of strength? A. Yes, sir. 1
Q. But the question of skill came in the rapping?
A. Yes, sir.

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. You say there were other enamelers at the Standard making the high grade tubs? A. Yes, sir.

Q. Doesn't the grading of tubs depend very largely on inspection?

A. The quality does, but not the grade of the tub; the pattern designates the grade; there is the five inch or rolled rim; the flat rim; the round bottom and the two inch bot- 2
tom; the different kinds are the qualities.

Q. Will you give the definition of a high grade tub, a five year guaranteed and a two year guaranteed?

A. The high grade tub is a five year guaranteed tub enameled in the most scientific way, with the most artistic finish we can get on it. It is supposed to be perfectly welded; perfect in every respect, no pin holes; no dirt; no rough spots; it is supposed to be the nearest thing and smoothest to glass you can get. The two year guaranteed tub is just as good in quality only a different design of tub in our fac-
tory. 3

Q. A different design?

A. Yes, sir; a smaller rim or narrower bottom.

Q. One of the witnesses, that is, Mr. Shield, was talking yesterday of five year tubs and high grade tubs as though they were different?

A. You can give them the five year tubs in any design, that is, with that finish, with that enamel.

Q. Did you ever see this price list which is known as Petitioner's Exhibit No. 41?

A. I have seen it in our office; yes, sir.

Q. Did you use it? A. No, sir; it is not for me to use. 4

Q. It is not in your business? A. No, sir.

Q. Mr. Davis might have used it?

A. I don't know; I did not ask him.

Q. You did not help in the making up of this (indicating Petitioner's Exhibit No. 41)? A. No, sir.

Q. Is there anything about high grade tubs in there?

A. I don't know.

Q. Are not high grade and five year guaranteed tubs the same thing? A. No, sir; they are not.

1 Q. Would you ever call the two year guaranteed tubs a high grade tub in the trade?

A. Yes, sir; they call that a high grade tub.

Q. In the trade? A. Yes, sir; in the trade.

Q. You also call a five year guaranteed tub a high grade tub? A. Yes, sir.

Q. Then, do the words "high grade" simply denote the quality in the trade?

A. Yes, sir; it means A No. 1 quality as good as you can make it; that is, in our factory.

2 Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

At this point the hearing was adjourned until the following morning, February 17, 1911, at the Federal Building, New York, at 10:30 o'clock.

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3 Mr. GROSVENOR: Counsel for Government understands that we are going on with the hearing tomorrow and Saturday in New York and is also willing to go on next week, with the reservation of one or two days at the end of the week for the argument in Detroit.

Mr. CHRISTY: Very well.

4

IN THE CIRCUIT COURT OF THE UNITED STATES, 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

2

Post Office Building,

New York, N. Y., February 17, 1911.

Pursuant to adjournment the taking of the evidence on behalf of the defendants was resumed in the Post Office Building, in New York, N. Y., on the 17th day of February, 1911, at 10:30 o'clock a. m.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney General. 3
HERBERT NOBLE, Esq.,
on behalf of the Defendants.

JOHN J. MITCHELL, a witness of competent age, produced on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Will you please state your full name?
A. John Joseph Mitchell.
Q. Where do you live? 4
A. 122 Anderson Street, Trenton, New Jersey.
Q. What is your occupation, and by whom are you employed? A. The Mott Company.
Q. In the enameling plant of the J. L. Mott Iron Works?
A. Yes, sir.
Q. That is located at Trenton, is it not? A. Yes, sir.
Q. Are you employed in that plant? A. Yes, sir.
Q. What is your position? A. Foreman.
Q. In what part of the plant?

1 A. The enameling department.

Q. Did you ever do any enameling yourself?

A. Yes, sir.

Q. For how many years were you an enameler?

A. Well, I couldn't exactly say; I judge about fifteen years.

Q. You are now foreman in the enameling department?

A. Yes, sir.

Q. Do you recall a suit between the Standard Company and the Mott Company relating to what is known as the pneumatic dredger? A. Yes, sir.

2 Q. After that suit was terminated will you tell me what kind of a dredger was used in the Mott works?

A. Why, the Ditheridge patent.

Q. What was the shop name, that is the name by which that dredger was commonly known in your shop?

A. Why, the Ditheridge dredger.

Q. The Ditheridge dredger is a pneumatic dredger, is it not? A. Yes, sir.

Q. Previous to adopting the automatic or pneumatic dredger, what kind of a dredge was used in the Mott enameling shop?

3 A. Why, we used two kinds, the banjo—

Q. That was invented by whom?

A. Mr. Lefferts invented that.

Q. And the other kind was the kind that was involved in the Mott suit, wasn't it? A. Yes, sir.

Q. That is, the one involved in the Mott suit was an automatic or air dredger?

A. Well, I don't know the name of it; we did not have it long enough to find out much about it.

Q. When that suit was terminated you stopped using that dredger? A. Yes, sir.

4 Q. Let me ask you some questions about what you call the banjo dredge; was that a hand dredge? A. Yes.

Q. Describe that, as well as you can?

A. Well, some called it a banjo and some a harness; you had a leather shoulder piece here that came around here (indicating).

Q. The leather strap went around the right shoulder and came over the left?

A. Yes, sir; and some put it the opposite way and it went down and was attached to the sieve and there was a handle

there and the strap was fastened under that and there was a part that came across your thigh here (indicating) and your knocker was on a swivel and you kept knocking it all day long, as long as you could. 1

Q. You had a leather harness that went over one shoulder and then around over the other shoulder? A. Yes, sir.

Q. And that helped support the weight? A. Yes, sir.

Q. Then you had a handle that rested against the body right around the groin? A. Yes, sir.

Q. How was the hammer operated?

A. The hammer was operated just like that (indicating).

Q. The hammer was fastened on by a bolt to the handle? 2

A. Yes, sir; it was fastened on to the handle by a bolt and you kept tapping it all day long.

Q. The hammer was fastened to the handle by a bolt through the center of it? A. Yes, sir.

Q. And on one end of that hammer there was a forked piece of iron which went over the handle? A. Yes, sir.

Q. And on the other end there was a piece of iron which came out and you moved that up and down (indicating)?

A. Yes, sir.

Q. And the other end struck the handle? A. Yes, sir.

Q. That is what you call the hand tapping or banjo dredge? A. Yes, sir. 3

Q. Did you ever do any enameling with that dredge?

A. Yes, sir.

Q. For about how many years?

A. I think about—I cannot remember that, but about twelve years.

Q. Did you ever have any experience with the old short-handled hand dredge which you hung under your arm?

A. No.

Q. Or the long-handled hand dredge which was supported by a counterweight and hung under your arm? A. No. 4

Q. All the time you were an enameler and before you adopted the use of the pneumatic dredger you enameled by this banjo or Lefferts' dredge, is that right? A. Yes, sir.

Q. Was there any difficulty in operating that dredge?

THE WITNESS: The banjo dredge?

Mr. NOBLE: Yes.

A. Well, yes, there wasn't more than one man out of fifty who could stand doing it.

Q. Explain what the difficulties were.

A. Well, in the first place the weight carrying was one difficulty; the next difficulty that I found was that it burned the face off of you because you were too close to the ware, and I found that you were all the time blistered here (indicating the groin) and the perspiration ran down and made it sore.

Q. You say the weight down around your groin was so great that it blistered you? A. Yes, sir.

Q. And the perspiration poured down there and made it sore? A. Yes.

Q. What other difficulties were there?

A. I don't understand what you mean.

Q. Was it an easy thing to operate that handle or not?

A. It was easy enough if you could last; it was all right for the first couple of tubs that you made, but after you carried that around a while you got so tired that you were mighty glad when the day was through, and sometimes my hand almost stuck to the handle.

Q. You mean the handle you were hammering with?

A. Yes, sir.

Q. How did the enameling powder come through that sieve?

A. Well, it naturally had to come out in chunks, as a fellow says; if he got tired and had to hammer hard, then it came out in chunks; it never did come out even, but it got worse as you got tired.

Q. It came out in puffs all the time, as I understand you?

A. Yes, sir.

Q. And when you got tired those puffs made the enamel come out still more unevenly? A. Yes, sir.

Q. How close to the tub did you have to stand with that arrangement?

A. Oh, I forget now how long the handle of those banjo sieves were; I could not exactly say.

Q. Four or five feet?

A. I don't think it was five feet; I couldn't exactly say how long it was.

Q. Describe how you operated it while you were enameling the ware; how you had to move it around and so on?

A. Well, you simply held it here (indicating) like this, and this hand kept knocking up and down.

Q. How did you guide it over the surface of the article you were enameling?

A. Guided it with the left hand. 1

Q. And what did you do with the right hand?

A. Tapped with the right hand.

Q. Did you have any help in moving it around with your body?

A. That was the only support you had; you had to move it around with your body because it was strapped to your shoulders.

Q. At the end of a ten hour day will you describe how you or the men's condition usually was that you knew about?

A. I was in a condition that I would be so hot I would be afraid to even go out when I did get out. 2

Q. You got so heated?

A. Yes, I was afraid to go out in the sun.

Q. Were there any times when the men could not finish a full day? A. Yes, some could not.

Q. Some would play out and some would not?

A. Yes, sir.

Q. Did you have any difficulty getting men broken in to using that sieve?

A. Yes, sir; I never broke in any men, but it took me over a year and a half to be broke in right.

Q. Did you see any other men being broken in? 3

A. Yes, sir.

Q. Was there any difficulty getting men to break in?

A. Yes, sir; it was pretty hard; it took quite some time to break that man in.

Q. Could you always break a man in?

Mr. GROSVENOR: I object to that, because the witness has said that he never broke any in.

Q. I will withdraw that; did you ever know of any instances where men had to give it up? A. Yes, sir.

Q. How many instances of that sort? 4

A. They would have to give it up for months at a time. I cannot say if they had to do it altogether; I can mention one man who had to give it up—

Q. Altogether? A. Yes.

Q. Going back now to the question of breaking men in; did you ever know of any men who could not be broken in?

A. Oh, yes.

Q. How many men within your observation and experience did you know of?

1 Mr. GROSVENOR: I think the reason why they could not be broken should be shown more specifically.

Mr. NOBLE: I will ask that question next.

Q. How many men can you recall?

A. I don't know that I could recall a whole lot of men.

Q. Was it a matter of frequent occurrence, though?

A. Yes, if you will let me put it my way: In the first place they could not use the tapper right, and in the second place they would get disgusted with the job and quit.

Q. Why would they get disgusted?

A. Because the work was too laborious.

2 Q. Were there any other reasons why these men could not be taught to be enamelers, if you know, that is, with the old banjo dredge?

Mr. GROSVENOR: I object to that.

A. It was pretty hard to learn; that is the only reason that I can give for it.

Q. Pretty hard to learn?

A. Yes, sir; because it is not every man who can use the banjo dredge.

Q. Did it require skill or judgment, or something of that

3 sort? A. It required brawn and muscle.

Q. In moving the banjo dredge over the article to be enameled did you ever experience any difficulty in guiding it to just the place that you wanted to go?

A. Some men would and some would not; it depended on the man. I could bring it to pretty near any place I wanted it, but others could not.

Q. Could you put the enameling powder on even with the banjo dredge?

A. Well, we had to do the best we could with it.

Q. How did the enameling powder come out?

4 A. In chunks.

Q. In chunks or puffs? A. Or puffs.

Mr. GROSVENOR: Counsel has covered that point once.

Q. Now, compare that with the way that it comes out with the automatic dredger? A. It comes out nice and even.

Mr. GROSVENOR: Which automatic dredger?

Mr. NOBLE: The one put in use after the Mott suit was determined. 1

THE WITNESS: The Ditheridge patent.

Mr. NOBLE: Yes, does it come out evenly that way?

THE WITNESS: Yes, sir.

Q. Was there any difficulty which arose from the fact that the enameling powder dropped on to the article to be enameled in chunks or puffs?

Mr. GROSVENOR: The witness did not use the term "puffs."

Q. Didn't you say "puffs?" A. No, sir; "chunks." 2

Q. Well, was there any difficulty in making the enamel fuse by reason of the fact that it was on that way? Did you have any trouble burning it on?

Mr. GROSVENOR: I object to the question as leading.

Mr. NOBLE: I will withdraw that question.

Q. Tell me which is the better enamel, that which is smooth or that which is put on in these deposits which you have just described? A. That which is put on smooth.

Q. What is the trouble with deposits coming down in chunks or puffs? 3

A. Well, if it is put on in puffs you put it in the fire too often to try to get that down even; consequently the working man loses that tub and also the company loses it.

Q. Describe what you mean by that, the man and the company losing it?

A. Well, the workman don't get paid for that tub.

Q. Why don't the workman get paid for that tub?

A. Because it is bad.

Q. And the company loses it also because it is bad, is that correct? A. Yes, sir.

Q. Suppose you had a tub of that sort and you were to strike it a blow in putting it in the furnace or taking it out, what effect would that have? A. I don't understand you. 4

Q. Suppose a piece of enameled ware where the powder had been put on thicker in some places than in others, due to the powder coming out in chunks or puffs, and you were to put that article into the furnace to heat or fuse it, what would be the effect if you struck it against the side of the furnace or let it down too hard?

A. Well, the powder would fall right off and there would

1 be a mark there that it would be difficult to cover up again.

Q. If it is put on with the automatic dredger which you have used since the determination of the Mott suit, how is it then put on? A. It is on smooth.

Q. Is it put on with equal thickness?

A. Yes, sir; and much better than with the banjo sieve.

Q. Which is the better to put it on, thick or thin?

A. Well, it must be on enough to make it nice and white.

Q. Which is the better, the thick or the thin?

A. The thin is the better.

Q. And is that why you say that the automatic will do

2 better work than the banjo dredge?

Q. Compare the number of losses that you had as a

A. That is one of the reasons; yes, sir.

workman, as an enameler, when you used the banjo dredge and when you used the automatic dredger?

Mr. GROSVENOR: You are speaking always of the Ditheridge in referring to the automatic dredger?

Mr. NOBLE: Yes.

A. Why, the losses are less now than they were then.

Q. What is that due to?

3 A. Well, from my experience it is due to the use of this dredger.

Q. Which do you consider is the better ware, that manufactured by the old hand dredge, known as the banjo dredge, or that manufactured by the Ditheridge or automatic dredger?

A. By the Ditheridge dredger.

Q. The ware manufactured by the Ditheridge automatic dredger? A. Yes, sir.

Q. The men have less losses from bad ware in your shop?

A. Yes, sir.

4 Q. Is the inspection by which you establish whether a piece of enamel ware shall pass or not more severe now than when you had the banjo dredge?

A. Why, it is more severe now, yes.

Q. How many tubs could you turn out by the old banjo dredge in a turn of about ten hours—that is, I mean you or an average good man?

THE WITNESS: That is an average day's work?

Mr. NOBLE: Yes.

A. Well, the crew turned out from ten to twelve tubs and 1
that was considered a pretty good day's work.

Q. By the crew you mean the men working on a furnace?

A. Yes, sir.

Q. After the introduction of the automatic or Ditheridge dredger, how many tubs could a crew turn out or an enameler turn out with his assistants; I mean an average amount?

A. Oh, well, take it at an average, a good man could turn out from 18 to 19.

Q. From 18 to 19; is that also true of other enamel ware that you could turn out a greater amount of enameled ware by the use of the Ditheridge dredger or the air dredger than 2
you could by the old Lefferts' dredge?

THE WITNESS: What kind of ware do you mean?

Mr. NOBLE: The smaller ware.

A. Yes, sir; you could turn out more.

Q. And which would be the better, that made by the old Lefferts' method or by the air method?

A. Well, there was very little small ware made in Lefferts' time.

Q. So you haven't a very good basis of comparison?

A. No, sir. 3

Q. Now, considering the cost, the enameling cost to the company, will you state which is the cheaper for the company, the enameling by the Lefferts' method or the enameling by the air method?

Mr. GROSVENOR: I would like to enter my objection and ask that the question be made more specific. Does that include the cost of the powder, or at the furnace?

Mr. NOBLE: Read the question.

The last question was then read by the stenographer. 4

Mr. NOBLE: I mean to confine my question to the labor cost of the men actually doing the enameling?

A. Why, with the Ditheridge dredger it is cheaper than with the use of the old banjo dredge.

Q. When they used the banjo dredge did they pay piece work to the men? A. Yes.

Q. And do they pay piece work now? A. Yes.

Q. At which time did the men get more money per piece?

A. When they used the old banjo.

Q. When they used the old banjo dredge? A. Yes.

Q. At which time did the men make the most money on a turn, by the Ditheridge or the old banjo method, or by the week, whenever they were paid?

A. Why, they can make more money by the Ditheridge dredger.

Q. Going back to the losses that you said the men had sometimes; what was your experience after you had become a skilled enameler? What was your experience after you became an enameler?

A. Well, my experience was a very sad one sometimes.

Q. What was it?

A. I worked ten hours and got twenty cents sometimes.

Q. Why? A. Because they claimed that it was my fault.

Q. Because of the ware you turned out?

A. Yes, sir, they claimed it was not smooth enough.

Q. After you used the automatic dredger did that same thing happen?

A. I never used the automatic dredger very much.

Q. You have been a foreman? A. Yes, sir.

Q. Well, did the men under you have such instances of loss since you used the automatic dredger? A. No, sir.

Q. Well, when you were using the banjo dredge did the other men have losses? A. Yes, sir.

Q. And what were their losses due to?

A. I cannot say what they got docked for.

Q. But you lost because the ware did not come up to inspection? A. Yes, sir.

Q. How many hours a day do the men work with the Ditheridge dredger? I don't mean right now, but ordinarily?

A. Eight hours.

Q. And in that eight hours, as I understand, they can turn out from 18 to 20 tubs a turn?

Objected to.

A. No, that is a ten hour turn.

Q. Tell me about the condition the men were in when they finished their turn with the Lefferts dredge?

Mr. GROSVENOR: I object to that as it is too general.

Mr. NOBLE: That is, within your observation.

A. Well, as I said before, it all depended on the man; it took a strong, husky man to do it; a weak man had no chance and I don't care how strong he was he came out of there mighty weak. 1

Q. What did you people call the banjo dredge around the shop?

Mr. GROSVENOR: I object to that.

A. The man-killer.

Q. Did you ever hear any complaints of that character from the Ditheridge dredger? A. No, sir.

Q. You have operated the Ditheridge dredger, haven't you? A. Yes, sir. 2

Q. Which is the easier to operate?

A. Why, the Ditheridge dredger, of course.

Q. What are any of the reasons why it is easier?

THE WITNESS: I can give all of the reasons if you want them.

Mr. NOBLE: Yes, I would like to have them all.

A. First, you do not have to carry any weight.

Q. You have it suspended by a counterweight?

A. Yes, sir; next you can stay further away from the heat. 3

Q. Because it has a long handle?

A. Yes, sir; and the third is that you have a steady vibration all the time.

Q. And you can put the powder on smoothly?

A. Yes, sir; and evener.

Q. With the banjo dredge you say you had one hand tapping and the other hand guiding the dredge? A. Yes.

Q. Tell me what you do with the Ditheridge dredger?

A. Take both hands like this (indicating).

Q. In other words, you have both hands to guide the Ditheridge dredger? A. Yes, sir. 4

Q. By which dredge did you use the most enamel powder?

A. Well, I don't know that there would be much difference there; that I could not say.

Q. You haven't had enough experience with the Ditheridge dredger to say about that?

A. Well, what difference there would be would be small, I guess.

1 Q. With which could you get over the article to be enameled more quickly, the banjo dredge or the air dredger?

A. The air dredger.

Q. How many times was it your practice to put back an article to be enameled—that is, put it back into the furnace with the old banjo dredge?

A. Why, on very rare occasions you had to do anything like that after you broke a man in—

Q. You don't understand me: I understand with the Ditheridge dredger you get the enamel on smoothly all over at one time? A. Yes, sir.

2 Q. And you could not do that with the old method?

A. No, sir.

Q. With the use of the air dredger you can get your enamel on with a continuous flowing sheet and get it over quicker than with the old method, is that correct? A. Yes.

Q. Is there an advantage in getting it over quick?

A. Yes.

Q. What is that advantage, what are the advantages?

A. The advantage is the quicker you get your tub enameled the quicker you get it back in the fire and the less heat you lose and you do more work.

3 Q. Is it important at all in point of having the enamel on smooth to get it good and smooth so that it stays on the tub well? Is it important to get it on quickly? A. Yes, sir.

Q. Going back now to the old hand dredge, the enamel came out, you said, in puffs of powder? A. Yes, sir.

Q. And, of course, it fell on the tub in the same way. Did you have, then, the same thickness of enamel everywhere on the tub or not?

A. No, sir; you could not have it uniform in that way.

Q. So that some parts were thicker than others?

A. Yes, sir.

4 Q. What did you do?

A. Roughed it down with the rubbing iron and take it out two or three times and put it back on account of that defect.

Q. You mean you would take it out of the furnace and put it back in the furnace three or four times to relieve that defect? A. Yes, sir.

Q. If the enamel is on thick and thin that way, what would happen if you struck it a blow?

A. Well, if a tub that is enameled thick and a tub that

is enameled thin—the tub that is enameled thin will stand a harder jar than the one enameled thick. 1

Q. If it is thick it will break off quicker? A. Yes, sir.

Q. And when it was on thick and thin did you have any trouble fusing it down in the furnace?

A. Well, you would have to keep it in the furnace long enough to get the thick part down and in doing that the thin part was apt to singe on you.

Q. Do those difficulties which you have described as occurring when you used the old hand banjo dredge—do they occur now with the use of the Ditheridge dredger when you can put the enamel on in a continuous sheet? 2

A. They do occur, but very seldom.

Q. Have you ever broken in any men to the use of the air dredger? A. Yes, sir.

Q. Tell us what your experience was.

THE WITNESS: My experience was this—I don't know what you want to get at.

Mr. NOBLE: Just tell it in your own way.

A. Learning the banjo dredge took me over a year and a half. Now I can take a man of any kind of judgment—I don't care what kind of a greenhorn he is, whether off a freight car or off the street—and learn him how to enamel tubs within a week, inside of a week. I don't mean that I can teach him to judge his heat, but inside of six days I could have him broke in. 3

Q. As far as the question of putting the enamel on is concerned, you can teach him, you say, within a week or six days? A. Yes, sir.

Q. But as far as the judging of the heat was concerned that would take, of course, longer? A. Yes, sir.

Q. How long did it take you to learn the use of the old hand tapper? 4

A. Over a year and a half, and then I did not know it right, but I don't know whether it was my fault or not.

Q. Was that the experience also of the men around you?

A. Yes, sir; as far as I could see.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Mitchell, the chief difficulty, I think you stated, with the banjo dredge was the weight of it, is that right?

A. That was one of them.

Q. Well, you named them in order; you said the weight, and then that you were too near— A. Yes.

Q. And the third you said was that it was difficult to get that steady rapping motion? A. Yes, sir.

Q. The objections, then, to the banjo dredge or the hand dredge were those you have enumerated, those are the chief objections? A. Yes, sir.

Q. When did you first try to suspend the weight of the dredge by a counterweight? Was that when you first got a pneumatic dredger? A. Yes, sir.

Q. And that was the dredger which you used and which was the subject of a suit with the Standard people, is that right? A. Yes, sir.

Q. And after that suit was decided against you then you took up this Ditheridge dredger? A. Yes, sir.

Q. That was also suspended? A. Yes, sir.

Q. But while you had a hand dredge you never tried to suspend the weight, is that right?

A. Not the banjo; no, sir.

Q. I mean by the hand dredge, the banjo dredge?

A. No.

Q. What was the length of that banjo dredge?

A. I really couldn't tell what that was.

Q. Have you got one down at the plant? A. Yes, sir.

Q. Will you bring it in tomorrow?

Mr. NOBLE: He will not be here tomorrow. I will have it here tomorrow if you want to put it in evidence.

Mr. GROSVENOR: I want the banjo dredge that you used at your plant.

THE WITNESS: All right.

Q. Have you ever used the long-handled hand dredge supported by a weight? A. No, sir.

Q. Do you have anything to do with the making of the powder out at the plant?

A. No, sir; nothing whatever.

Q. You don't know what ingredients go into the making?

A. If I did I would have a better job, I guess.

Q. What was that?

A. If I did I would have a better job, I guess.

Q. You consider that, then, one of the essentials in the business?

A. I don't know anything about the making of the powder. 1

Q. But it is important?

A. Yes, sir; if it is not they keep it very secret.

Q. Now, in the twelve years that you were an enameler, you used this banjo dredge entirely throughout that time?

A. Yes, sir.

Q. Were there changes made in the powder from time to time, do you know?

A. No, sir; I don't know anything about the powder.

Q. At times did the powder seem to work more poorly than at other times? A. Yes.

Q. Did you call that to the attention of the powder people? 2

A. Well, no, I never called their attention to it.

Q. That is because they would know if the results of your work were not as good as at other times—the powder people would know it, wouldn't they?

Mr. NOBLE: I object to that question. That is an attempt to have the witness express an opinion as to the quality of the powder, which he has already stated he knew nothing about?

A. I can answer this way: I was supposed to work the enamel, to burn it on, and that is all. Today I am supposed to take charge of the men, and I don't know anything more about the powder than that. 3

Q. Do you know anything about the iron?

A. No, sir; I do not.

Q. That is, the making of the iron?

A. No, sir, I do not.

Q. You don't know anything about the chemical analyses of the iron? A. No, sir, I do not.

Q. Is that a secret too?

A. I don't know; it must be; I don't know anything about it. 4

Q. Do you have anything to do with the making of the slush? A. No, sir.

Q. Do you have charge of the application of the slush, that is, I mean of the men who put the slush coats on the tubs? A. Yes.

Q. The slush is given to you and you have it put on?

A. Yes.

1 Q. Is the tub put into the furnace with the slush coat on dry or wet? A. Dry.

Q. How long does the tub then stay in the furnace?

A. All that a good deal depends on the heat you have in the furnace.

Q. Until the tub gets a certain color, then? A. Yes, sir.

Q. Then, no matter what dredge you use, you have to get your tubs the same color, don't you?

A. Yes, sir, you do. If you do not you get it uneven; if you enamel that thick the richer it is the better looking it is; it will look new enough in this spot (indicating) and
2 if this spot here looks blue and it is not on uniform, then it is not on right.

Q. Then, after you get the tub to a certain heat you take it out and put a coat on? A. Yes, sir.

Q. Do you have these tables there?

A. Yes, sir, turn them by hand.

Q. Did you have them with the hand dredge?

A. Yes, sir.

Q. How long does it take to apply the first coat of powder with the Ditheridge dredger?

A. I could not give an exact answer to that. I should
3 judge it would take about four minutes.

Q. Did you ever time it? A. No, sir.

Q. How long did it take to do it by the hand dredge?

A. I suppose seven or eight minutes, probably.

Q. Did you ever time that?

A. No, but I could tell pretty near the length of time it takes to do it. I would not say the exact time.

Q. Now, I show you Exhibits Nos. 278, 279 and 280 filed by the petitioner; was your banjo dredge as long as this Exhibit No. 279?

A. Oh, no, sir; not the handle was not; no, sir.

4 Q. You notice that this Exhibit No. 279 has a place for the attachment of a hook? A. Yes, sir.

Q. And yours had nothing like that?

A. No, sir; nothing like that. There was a hook like that, but that held to the strap around your neck.

Q. I show you Exhibit No. 278, the short-handled dredge; was your dredge about the length of that?

A. I should judge that the handle would be pretty near that length.

Q. But it had a strap so that the weight was supported around the body? A. Yes, sir. 1

Q. Exhibit No. 280, which is the Arrott dredger, has a place on it for the attachment of a hook; has your Ditheridge dredger a place like this (indicating)? A. Yes, sir.

Q. Then you have a counter-balance, is that right?

A. Yes, sir.

Q. Did you ever try to work with one of these long-handled hand dredges supported by a counterweight?

A. No, sir; I tried to use one of these (indicating) but I could not.

Q. One of the short ones? A. Yes, sir. 2

Q. When did you do that?

A. Oh, many a time I tried it but could not work it.

Q. When? A. About three years ago, I guess.

Q. During the time of the suit?

A. Why, we used the banjo sieve during the time of the suit.

Q. You testified in that other suit, didn't you?

A. Yes, sir.

Q. What turn do your men work that handle this Ditheridge dredger?

THE WITNESS: What turns do they work? 3

Mr. GROSVENOR: Yes, how long.

A. Ten hours; two gangs work ten hours at present and all the rest eight hours.

Q. That is with the Ditheridge dredger? A. Yes, sir.

Q. What time did they work with the old hand dredge?

THE WITNESS: Do you mean down in New Jersey or up in New York? I work them at both places, you know.

Mr. GROSVENOR: Well, this time you have testified about you were working ten hours? 4

A. Yes, sir.

Q. And 12 hours? A. No, sir, not twelve.

Q. But you would work with this hand dredge ten hours at a stretch, would you?

A. Yes, sir; not at a stretch exactly; sometimes we would work over ten hours; it would depend on how you could keep your men togegther.

Q. But your turn was ten hours? A. Yes, ten hours.

1 Q. Do you consider this judgment respecting the time the tub should be in the furnace as important? Let me make that clear: On your direct examination you testified that you could take a man from the streets and teach him to use the dredger in six days, but that you could not teach him to tell when to take the tub out of the furnace. Is that correct?

A. I said I could not teach him to judge the heat in that time.

Q. What do you mean?

A. I couldn't teach him to judge the heat in that time.

2 Q. Is that an important matter? A. Yes, sir.

Q. Why is that important?

A. Because he will burn his enamel if he does not know just how long and if he does not have heat enough it will fall off.

Q. So that is an important matter no matter what kind of a dredge you use? A. Yes.

Q. Do you have anything to do with the sale of your product in the market? A. No, sir.

Q. Have you been over any other factories than your own? A. No, sir.

3 Q. You are not acquainted with any shops where any dredges were used by other people.

Q. Then your testimony is confined entirely to this banjo dredge, which is the only kind you ever tried?

A. Yes, sir.

Q. Since May, 1910, or within the last ten months, have you made any change in the dredger used at your factory?

THE WITNESS: Since last May?

MR. GROSVENOR: Yes.

4 A. Not to my knowledge.

Q. Well, you would know if there had been any?

A. Well, I ought to.

Q. Then can you say that there has or has not been any change? A. I said not to my knowledge.

Q. Has there been any change, then, why do you hesitate?

A. Because I did not see any change. If there has been a change it was unknown to me.

Q. It would be known to you if there was any?

A. Yes.

Q. Then, cannot you answer Yes or No to that question: Has there been any change?

(Witness failed to answer.)

Mr. GROSVENOR: Will you read the question, please?

The stenographer then read the last question.

THE WITNESS: Well, that is the only way I can answer that question.

Q. Can't you answer it Yes or No? A. I cannot.

Q. Has there been any change—don't you understand my question?

A. I understand the question, but that is the only way I can answer that question, that if there was any change made it was unknown to me.

Q. It would be known to you?

Mr. NOBLE: It was unknown to him, he said.

Q. Has there been any change made?

Mr. NOBLE: The witness has answered that question. He said that if there was any change made he did not know of it.

A. If there was, it was unknown to me.

Q. Then there has not been any?

A. Not that I know of.

Q. When did you first begin to use the Ditheridge dredger? A. That I couldn't tell you.

Q. Approximately? A. I don't remember.

Q. Can you say within two years?

A. I don't remember.

Q. Did you ever use the Arrott dredger out at your place?

THE WITNESS: Which dredger is that?

Mr. GROSVENOR: Did you ever hear of that dredger?

THE WITNESS: Is that the one that this suit is about?

Q. Look at this Exhibit No. 280 (indicating); you notice that has a place for the attachment of a hose and it is worked by compressed air and there is a button underneath and the handle is made of iron and is suspended.

1 Q. Or the longer-handled dredge, such as Exhibit No. 279? A. No, sir; I never seen any of them.

Q. How many years did you use the banjo dredge?

A. Let me see—about five years in Trenton—I guess I used it about seven years.

Q. About seven years? A. Six or seven.

Q. Tell me how that dredge was used?

A. Well, it was a motion of the body from the hip; there was a strap around your shoulder.

Q. How did you tap it?

A. With the hand; the handle came up like a brake.

2 Q. And was it pivoted to the side of the dredge?

A. Yes, sir.

Q. And you worked that up and down? A. Yes, sir.

Q. That made the blows which caused the powder to go through the sieve? A. Yes, sir.

Q. Describe how the powder came through that sieve?

A. Well, in standing in a straight position like this (indicating) you held it over the tub and it came out of the sieve in lumps—not even.

Q. In puffs? A. Yes, sir.

Q. As you struck the blow the powder would come

3 down through the sieve?

A. Yes; if you were not very careful it would fall over in lumps.

Q. You mean if you were not very careful it would run over the edge of the sieve? A. Yes.

Q. In addition to that when it came down through the sieve how did it come down?

A. Right through the middle in little lumps or clots.

Q. And as it came through the sieve was it a continuous flow?

A. No, it was just according to the shock the sieve got,

4 like the tick of a clock.

Q. One deposit came out after the other?

A. Yes, sir; just as the blow was struck.

Q. And if you were not careful it would fall off the forward edge of the dredge and get down in the tub?

A. Yes, sir.

Q. Was there any difficulty in getting the powder which came out that way on the article which you were enameling —that is, getting it on smoothly?

A. Yes, sir; if you did not look out for it.

Q. Suppose as you went along in that way it fell in these intermittent puffs, as we will call it—is that a good description of that? A. Yes. 1

Q. You would go around the entire tub that way?

A. Yes, sir.

Q. Would you get the same thickness all over?

A. No, sir; you would not, you might if you were careful, but you could not spend all day at one or two tubs because it would not pay you.

Q. How many tubs could you make every day with the old banjo method? A. It took about an hour to a tub.

Q. Then, in a ten hour day you would make ten tubs? 2

A. Yes, sir; or probably a little more than an hour to a tub.

Q. Did you ever lose any of those tubs on inspection?

A. Yes, sir; on several occasions.

Q. What do you mean by "on several occasions?"

A. Well, they would be crazed or it would fly off, and if that happened you would not get paid for the tub. Or, if it dropped down in the corner you could not use it.

Q. Was the work hard or not with this banjo dredge?

A. I should say it was hard, terribly hard.

Q. Did the heat affect your body in any way? 3

A. Well, part of your body was not two feet away from the tub and as far as your head is concerned, it must have been right into the tub.

Q. And naturally it must have been pretty hot?

A. Yes, sir; your head was into the tub.

Q. What was the color of the tub when you would take it out, that is, the color you would try to get it?

A. It was red, of course.

Q. You try to get them a bright cherry red, don't you?

A. Yes, sir; a little redder than that.

Q. Did you afterwards use what is called the Ditheridge dredger? A. Yes, sir. 4

Q. With the use of which dredge were you able to make the better enameled ware?

A. With the Ditheridge dredger, of course.

Q. How many tubs could you turn out on a turn using the Ditheridge dredger, that is, on a ten hour turn?

A. You could nearly turn out two tubs an hour.

Q. So that in a turn of ten hours you could turn out twenty tubs? A. Yes, sir; from 18 to 20.

1 Q. Were there any difficulties in getting the powder on wherever you wanted it with the old banjo dredge?

A. I told you before that there were.

Q. What were those difficulties?

A. Well, the stuff fell in clots and sometimes if your tub was too long out on the table and was too cold it took too long to burn it on and if you did not rub it on, why, there was a clot would stay on the tub and the tub would be thrown out.

Q. With which dredge could you get over your tub quickest? A. Why, with this Ditheridge dredger, of course.

2 Q. Is there any advantage in being able to get over the tub quickly in making enameled ware?

A. Yes, the hotter the tub and the quicker you get the enamel on, and get it back in the furnace, then the better it will melt; it will melt smoother.

Q. Then, the quickness with which you put the enamel on the tub is an important element?

A. Yes, sir; and so is the heat.

Q. Can you say with which dredge you used the greater amount of enameling powder?

A. Well, I could not exactly say that; because you were 3 not thinking about the powder, but you were thinking about your face or the tub. I thought that I used more powder with the banjo sieve because of the weight on my back, naturally.

By Mr. Grosvenor:

Q. You mean because of the weight on your back you thought it was more?

A. Yes, sir; because it was hung around your neck.

Q. It seemed a lot? A. Yes, sir.

By Mr. Noble:

4

Q. In the use of which dredge did you lose the most tubs? A. With the banjo dredge.

Q. Was the inspection at that time, to pass on the quality or class of the ware more severe during the days that you used the banjo dredge or the Ditheridge dredger?

A. I never knew when you would get paid for the tubs if they were not first class—

Q. Well, I want to know if the inspection is more severe now than it used to be?

A. Yes; about the same—about the same. 1

Q. By the use of which dredge do you make the most money—I don't mean per piece, but by the end of the week? A. You make more money with this dredge.

Q. With the Ditheridge dredger? A. Yes, sir.

Q. But you get less per piece?

A. Yes, sir; and it is easier work and you live longer.

Q. Which was the easier dredge to learn to use, the banjo dredge or the Ditheridge dredger?

A. Why, the Ditheridge dredger.

Q. The easier to learn? A. Yes, sir.

Q. Did you ever see any men have any difficulty using 2
the banjo dredge? A. Yes, sir; I seen plenty of them.

Q. Ever see any men having to quit using it because of the labor and the strain on them?

A. Yes, sir; there were lots of them that could not do it.

Q. Lots of them could not do the work and had to quit?

A. Yes.

Q. Did you ever know anybody who could not use the Ditheridge dredger because it was too hard on them?

A. No, not to my knowledge.

CROSS EXAMINATION BY Mr. GROSVENOR:

3

Q. Mr. O'Brien, have you anything to do with the making of the powder? A. No, sir.

Q. Do you know anything about it? A. Nothing at all.

Q. That branch of the business is beyond you?

A. Beyond me; yes, sir.

Q. How about the making of the tubs, the castings, do you have anything to do with that? A. No, sir.

Q. Who is the head of the factory out there at Trenton?

A. There is a good many; Mr. Bowman, to my knowledge, is superintendent there now.

Q. Well, don't you work out there? A. Yes, sir. 4

Q. Don't you know who the superintendent is?

A. You cannot tell the superintendent of any firm now, very well.

Q. Why is that?

A. Well, Mr. Mott may be the superintendent, you cannot tell.

Q. Who is your immediate superior?

A. Mr. Ditheridge is the immediate superior to me.

Q. What does he do?

1 A. He is the man who holds the secret to that sieve.
Q. What does he do out there?
A. He has the secret of this enamel.
Q. Oh, he has charge of the mixing of the enamel?
A. Yes, sir.
Q. And he is ahead of you?
A. Yes, sir; he is my boss.
Q. Isn't he the boss of Mr. Mitchell?
A. Yes, sir; certainly.
Q. How long has Mr. Ditheridge been there?

THE WITNESS: You mean with the Mott firm?
2 Mr. GROSVENOR: Yes.

A. About eight years, now.
Q. And who is Mr. Ditheridge's boss.
A. Mr. Mott, I think.
Q. Which Mr. Mott? A. Mr. J. L. Mott.
Q. The old man? A. Yes, sir.
Q. Does the Mr. Mott you refer to have charge of all the men in the factory?
A. His name is up in the works, so he must be the boss.
3 Q. Where do you get your pay? A. In the Mott office.
Q. Do you get paid by the day?
A. Yes, sir; but I get it by the week.
Q. And is Mr. Mitchell paid by the day?
A. Yes, sir; every week too.
Q. During the six or seven years that you were using this banjo dredge you made a good many tubs, didn't you?
A. Yes, sir; I had to or I would not be able to live.
Q. Did you ever hear of this long-handled dredge known as Exhibit No. 279? A. No, sir; never seen any.
Q. Did you ever work with a hand dredge the weight
4 of which was suspended from the ceiling? A. No, sir.
Q. The first dredge which you ever worked with that was suspended from the ceiling was this Ditheridge dredger?
A. No, sir; it was the dredger they had the lawsuit on.
Q. That was an automatic dredger, though? A. Yes, sir.
Q. Was the banjo dredge as long as this dredge, Exhibit No. 279? A. No, sir; about half as long.
Q. The chief difficulty with that banjo dredge was the weight, wasn't it? A. Weight and heat combined.
Q. By the heat you mean the nearness to the tub?

A. Yes, sir; your knees were that way (indicating), and the weight brought your head in over the tub. 1

Q. The chief advantage, then, of the Ditheridge dredger is that the weight is—

A. (Interrupting): Is off of you.

Q. And secondly that you are further away?

A. Away from the heat, and it does not affect your side so much.

Q. Because you are not so near it? A. No, sir.

Q. But the Ditheridge dredger is not as long as this Exhibit No. 279?

A. No, sir; you can put yourself a good distance away and your neck is not bent over. 2

Q. By the weight? A. Yes, sir.

Q. Do your men wear any protection while using the Ditheridge dredger? A No, sir; don't need any.

Q. Did they use any when working with the old hand dredge? A. Yes, sir; they used masks.

Q. How many men worked on a tub?

A. There are three now.

Q. Three with the Ditheridge patent? A. Yes.

Q. That is, the chief enameler, the rim man and the table man? A. Yes. 3

Q. How many did you use to have?

A. Two can make a tub if they want to.

Q. That is today?

A. Yes, I have seen four at the dredge, too.

Q. You mean at a banjo dredge? A. Yes.

Q. As a rule with the banjo dredge you had three men?

A. Yes, and four.

Q. As a rule, how many men do you have with the Ditheridge? A. We had two, but now we have three.

Q. You have three now? A. Yes, sir; we did use two.

Q. But you find three is better, do you? A. Well, yes. 4

Q. How many coats do you give a tub? A. Two.

Q. All tubs only have two coats?

A. Well, that is up to yourself.

Q. But the general rule is to give two coats? A. Yes.

Q. Then if when it comes out the second time the inspection shows some defect you put it back?

A. Yes, sir; the enameler has to see that defect or else he don't get paid for it; that is up to the enameler.

Q. Is the deciding just when to take the tub out of the furnace an important matter?

THE WITNESS: The taking of the tub out of the furnace?

Mr. GROSVENOR: Yes.

A. Yes, it is.

Q. I mean the decision as to when the tub is hot enough?

A. Yes, sir; a man has to know when it will melt or not.

Q. That is, if it is too hot it will melt. A. Yes, sir.

Q. You heard Mr. Mitchell's testimony? A. Yes, sir.

Q. He said that was very important? A. Yes, sir.

Q. He said it was harder to learn than how to use the dredger? A. Yes.

Q. You agree with him? A. Yes.

Q. Do you know anything about the selling end of your business? A. No, sir; nothing at all.

Q. Have you been through any other factories? A. No.

Q. Your company has always made good ware, has it not?

A. I guess so; if we did not we did not get paid for it.

Q. That has always been true? A. Yes, sir.

Q. How many furnaces have you at present?

A. We have five.

Q. The enameling end of your business is a small part, is it not, that is, of the tubs?

THE WITNESS: Of the tubs?

Q. The Mott Iron Works make a great many more things than enameled iron ware, don't they?

A. Yes, sir; stable equipments and all that kind of stuff.

RE-DIRECT EXAMINATION BY Mr. NOBLE:

Q. Among the advantages of the Ditheridge dredger which Mr. Grosvenor asked you about, he asked you if the chief advantage of the Ditheridge dredger over the old banjo dredge was not the getting rid of the weight and getting further away from the tub. Wasn't there an advantage in being able to get the enamel out in a continuous sheet also? A. Yes, sir.

Mr. GROSVENOR: I object to that as leading.

Q. You did not mean in answering his question to shut out the answer to me, did you? 1

Mr. GROSVENOR: Objected to.

A. No.

Q. Now, let us go over that again; what are the advantage of the Ditheridge dredger over the old banjo dredge?

A. Well, the advantage as I seen it, it is easier to put on; it makes a smoother tub and the man gets away quicker and he makes better pay with easier work.

Q. And he makes better ware? A. Yes, sir.

Q. Which is cheaper for his employer? 2

A. Yes, sir; better for himself and better for his employer.

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. How much did you make with the hand dredge a day?

A. Some days you might make four dollars or four and a half and some days you might make 50 cents or $2 or $1.25.

Q. How much were you paid per tub?

A. It was piece work.

Q. At how much?

A. There were all kinds of prices; I could tell you 50 different prices. 3

Q. And the turns were ten hours?

A. Well, it was up to you how many hours you worked. They did not care whether you worked or not. You got paid for doing so many tubs.

Q. And you get paid the same way now, that is, by the piece? A. Yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

4

At this point a recess was taken until 2 o'clock.

1 After Recess.

PATRICK MOONEY, a witness of competent age, produced on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION:

Mr. NOBLE: I had expected to have two more witnesses here who would have occupied the balance of today and tomorrow. They have not as yet arrived and I do not know whether they will be here tomorrow or not, not having had any excuse for their non-appear-
2 ance or any advices that they will be here later. If they are here tomorrow I shall be glad to go ahead. If not, when we adjourn I should like to adjourn until Monday at the Courthouse in Baltimore.

Mr. GROSVENOR: Counsel for Government agrees to adjourn until tomorrow and thereafter until Monday in accordance with the suggestion of counsel for defendants.

BY Mr. NOBLE:

Q. Now, Mr. Mooney, what is your full name?
3 A. Patrick Mooney.
Q. Where do you reside?
A. 650 Lamberton Street, Trenton, New Jersey.
Q. Where are you employed?
A. By the J. L. Mott Company.
Q. Have you been connected with or are you connected with the enameling department of the J. L. Mott Iron Works? A. Yes, sir.
Q. For how many years have you been connected with that company?
A. Well, I have been with them about twenty-three years.
4 Q. Have you ever been an enameler? A. Yes, sir.
Q. For how many years did you enamel iron ware for that company? A. Twelve years.
Q. Did you use during that time what is known as the banjo or Lefferts dredge? A. Yes, sir.
Q. Did you also use during that time what is known as the Ditheridge dredger? A. Not during that time.
Q. During any time that you were an enameler?
A. Yes, sir.

Q. For how many years did you use the banjo dredge? 1

A. I guess about twelve years.

Q. For how long did you use the air dredger or Ditheridge dredger? A. Three years.

Q. With which dredge could you make the better enameled ware? A. The Ditheridge dredger.

Q. How did you operate the banjo dredge?

A. We had a strap across our shoulder here (indicating) under the right arm and we kept tapping with the right hand.

Q. The tapper was attached to the handle by a bolt?

A. Yes, sir.

Q. How did you guide the dredge? 2

A. By moving our bodies.

Q. And it was strapped to your body and came across your groin? A. Yes, sir.

Q. You used your left hand to guide the dredge and your right hand to tap it? A. Yes, sir.

Q. Now, with the Ditheridge dredge, how did you hold that? A. You have two hands to hold it (indicating).

Q You have two hands to guide the dredge with with the Ditheridge, and one hand with the other? A. Yes, sir.

Q. And the hammering on the Ditheridge dredger is done by a pneumatic hammer? A. Yes, sir. 3

Q. Is the Ditheridge dredger suspended by a counterweight? A. Yes, sir.

Q. How near did you have to go to the tub or the article that you were enameling when you used the banjo dredge?

A. Well, I judge pretty close to it; you had to bend right over it.

Q. So that your face was right close down to the tub or the article you were enameling? A. Yes, sir.

Q. How did the powder come through with the banjo dredge? How was it deposited on the article you were enameling? 4

A. Well, it came out according to the way you rapped.

Q. According to the way you rapped?

A. Yes, sir; it came out in lumps.

Q. You mean it came through in puffs?

A. Yes, sir; one here and one there and so on.

Q. In other words the powder fell down on the tub as each puff came out as you moved the dredge over the surface of the article? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. By which dredge were you able to get the enamel on more smoothly? A. By the Ditheridge dredger.

Q. Did you have any difficulty in getting the enamel on where you wanted it with the banjo dredge? A. Yes, sir.

Q. What were the difficulties?

A. You could not use it very well; you only had one hand to use it and you could not get around in the different corners.

Q. With which dredge did you lose more articles that you had enameled, due to the defects in the enameling?

A. With the banjo dredge.

Q. With the banjo dredge? A. Yes, sir.

Q. Why was the enameling you did with the banjo dredge not so good as with the Ditheridge dredger?

A. Well, it did not come out even all over and smooth; one place would be thick and the other light.

Q. What would the effect be in putting an article which you were enameling back into the furnace if the enameling were thick in one place and thin in another?

A. Well, it would not cover it evenly; it would always leave a rough spot.

Q. And if you were to strike a blow on an article which was uneven, what effect would that have?

A. Well, where it was heavy it would fall off.

Q. Now, compare that with the enamel that you put on with the Ditheridge dredger; why is it you can make a better piece of enameled iron ware with the Ditheridge dredger than with the banjo dredge?

A. Well, you can put it all over even.

Q. Which one can you get over faster with?

A. With the Ditheridge dredger.

Q. How many tubs could you turn out in a turn of ten hours with the banjo dredge? A. I should say from 16 to 18.

Q. With the banjo dredge? A. No, excuse me.

Q. How many with the banjo dredge?

A. From ten to eleven.

Q. And how many could you turn out in the same length of time, I mean a turn of ten hours with the Ditheridge dredger, with the same class of material? A. From 16 to 18.

Q. Could you enamel small ware more rapidly with the Ditheridge dredger than you could with the banjo dredge?

A. Yes, sir.

Q. Tell me as to the smoothness with which you could

get the enamel on on the small ware as compared with the other dredge? A. With the Dtiheridge dredger— 1

Q. You could get it on smoother with the Ditheridge dredger? A. Yes, sir.

Q. Is the fact of getting the enamel on smooth of importance in the manufacture of sanitary enameled iron ware?

A. Yes, sir.

Q. Why is it of importance?

A. Because it makes it look better and you can do more by it.

Q. You can do more by it? A. Yes, sir.

Q. And is the article more durable and less likely to break? A. Yes, sir. 2

Q. Is there any advantage in being able to put the enamel on rapidly? A. Yes, sir.

Q. What is the advantage in that?

A. You can put it on quicker and you get it back in the furnace quicker and so you do not lose so much heat.

Q. In other words, you save your time and the furnace's time? A. Yes, sir.

Q. What is the advantage of having the enamel on sanitary enameled iron ware on evenly? 3

THE WITNESS: Evenly?

MR. NOBLE: Yes, what is the advantage in having it on evenly?

A. It stays there longer.

Q. By which manner could you make the more money?

A. With the Ditheridge dredger.

Q. And with which one were you paid the more per piece?

A. With the banjo.

Q. Tell me about the different amount of labor that you exercised with the two dredges? A. With the banjo dredge—

Q. Well, tell me something about the character of the labor, whether it was severe or otherwise? 4

A. It was laborious work; you had to carry a heavy weight all the time and you kept rapping all the time, and the arm would get stiff with the banjo dredge.

Q. Did the fact that you had to get close to the tub make any difference? A. Yes, sir.

Q. What difference did that make?

A. Well, it would burn your face off and the stomach; you were hot all the time.

1 Q. What effect did that have on the men, on you yourself, when you had to stand up and do this work in this way?

A. The men could not stand it.

Q. Did any men have to quit? A. Yes, sir.

Q. You yourself had to stop?

A. I had to lay off once in a while.

Q. What was your condition as to exhaustion and being tired out at the end of your turn in using a banjo dredge?

A. I was tired out and stiff across here (indicating).

Q. Across your loins, you mean? A. Yes, sir.

Q. Compare that with the way that you feel when you
2 have finished a turn with the Ditheridge dredger?

A. You feel good and you are not as tired.

Q. So that the labor was very much more difficult in the one case than in the other? A. Yes, sir.

Q. Very much harder in the one case than in the other?

A. Yes, sir.

Q. Tell me whether there were any difficulties in learning how to use the banjo dredge?

A. Yes, sir; there is quite a difficulty in learning that; there is not everybody that can learn it. It takes some time to learn that.

3 Q. Did you ever know of anybody that could not learn it?

A. Yes, sir.

Q. Were there many people who could not learn it?

A. Yes, sir; quite a few of them.

Q. Compare that with the difficulty of learning how to use the Ditheridge dredger, the air dredger?

Q. It is quite easy to learn how to use the air dredger.

Q. In other words you do not have to have skilled men to use the Ditheridge dredger, whereas you did have to have skilled men to use the banjo dredge, is that right?

A. Yes, sir.

4 Q. With which dredge did you manufacture the best ware?

A. The Ditheridge dredger.

Q. With which dredge did you lose the most from defective enameling? A. The banjo dredge.

Q. The banjo dredge? A. Yes, sir.

Q. Is the inspection of quality the same now as it was when you used the banjo dredge, or is it not so severe or more severe? A. It is more severe now.

Q. So with a severer inspection you lose less ware?

A. Yes, sir.

Q. And you make better ware? A. Yes, sir. 1

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Do you know anything about the enameling powder?

A. No, sir.

Q. Your duties are those of putting the powder on the tub? A. Yes, sir.

Q. Do you know anything about the slush coat?

A. Yes, sir; I do that.

Q. You put the slush on too? A. Yes, sir.

Q. Do you know anything about the making of the slush?

A. No, sir. 2

Q. Do you know anything about the chemical analysis of the iron used in making the casting? A. No, sir.

Q. Or in making the mold? A. No, sir.

Q. Or the patterns? A. No, sir.

Q. During these twelve years that you have used the banjo dredge you have made a good many good articles?

A. Yes, sir.

Q. And these other men in the enameling establishments also made good ware? A. Yes, sir.

Q. Did you ever try to use this long-handled dredge known as Petitioner's Exhibit No. 279? 3

A. No, sir; I never did.

Q. What was the hardest thing about the use of that old banjo dredge, the weight? A. The weight; yes, sir.

Q. Now, in using this new dredge, this Ditheridge dredger, the chief advantage of that over the other dredge is that you do not have to support the weight; isn't that right?

A. Yes, sir.

Q. And the next chief advantage of the Ditheridge dredger is that you are farther away, isn't that also correct?

A. Yes, sir.

Q. It is also an advantage in the Ditheridge dredge that you do not have to do the tapping with your hand? 4

A. Yes, sir.

Q. But the chief advantage is that you do not have the weight supported around your neck? A. Yes, sir.

Q. Have you ever been in any other factories outside of your own? A. No, sir.

Q. You do not know whether the long-handled dredge is used in some factories supported by a chain?

A. No, sir; I do not.

1 Q. The only hand dredge that you ever used in the Mott factory was this banjo dredge? A. The banjo; yes, sir.

Q. Within the last year have you used any hand dredges at the Mott Works? A. No.

Q. Do you do any of the rim work, that is, the enameling of the rims with the hand dredges?

A. No, I ain't done none of it.

Q. Oh, you are not on the work any more? A. No, sir.

Q. When did you quit enameling?

A. About a year ago this month, I guess.

Q. Until within a year you were, then, enameling?

2 A. Yes, sir.

Q. At that time did you ever use the hand dredge on any articles? A. No.

Q. Not even for pin holes?

Q. Not even for pin holes?

A. Oh yes, might use it for pin holes.

Q. You do have pin holes, then? A. Yes.

Q. Is there not an advantage in using the hand dredge for pin holes that you can get just a little powder out to cover up the pin holes while with the Ditheridge or the automatic dredger you get more powder than you want on

3 the pin holes? Is not that true? A. Yes, sir.

Q. You say you did make more tubs using the Ditheridge dredger than in using the banjo? A. Yes, sir.

Q. Per hour per turn? A. Yes, sir.

Q. And a large part of that saving was due to the fact that you did not have to carry the dredge any longer?

A. Yes, sir; and the rapping.

Q. And a large part of your strength was saved because you were not so near the tubs, isn't that right? A. Yes, sir.

Q. Is it not a fact that the rough spots are sometimes caused by trouble in the casting?

4 A. No, sir; I don't know, sir; by the enamel falling off—it is on too heavy and it falls off and you cannot put it on again.

RE-DIRECT EXAMINATION BY MR. NOBLE:

Q. These advantages which Mr. Grosvenor has asked you about as to the weight and the getting further away from the tub, and so on, do not change your answer that you can make better ware and get your enamel on better by the use of the automatic dredger, do they?

THE WITNESS: Sir, I do not quite understand you. 1
Mr. NOBLE: Will you read the question?
The stenographer then read the last question.

A. You can get the enamel on better by the Ditheridge dredger.

Q. You can get your enamel on better? A. Yes, sir.

Q. And make better enameled ware? A. Yes, sir.

Q. I forgot to ask you whether or not the advantage of the air dredger is not the fact that you can get the enamel on in a continuous flow so that it is even all over?

A. Yes, sir; you can get it on with a continuous flow and it is even all over. 2

Q. You can get that with the Ditheridge dredger?

A. Yes, sir.

Q. But you cannot get that with the banjo dredge?

A. No, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

ANTHONY BARRY, a witness of competent age, produced 3 on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Where are you employed?

A. The J. L. Mott Company.

Q. What is your address?

A. 606 Liberty Street, Trenton, New Jersey.

Q. Are you employed in the enameling department of the J. L. Mott Company? A. Yes, sir.

Q. Are you in the enameling department? A. Yes, sir. 4

Q. How many years have you been with them in the enameling department? A. About seven years.

Q. Are you engaged in enameling now? A. Yes, sir.

Q. What kind of a dredge do you use?

A. I use a Ditheridge dredger now.

Q. Have you been using that for several years?

A. Yes, sir.

Q. Did you ever try to learn to use the old banjo dredge?

A. Yes, sir.

1 Q. What success did you have? A. I could not do it, sir.

Q. Why not? A. I failed.

Q. Why?

A. I was not able to carry it; I could not work with it. A couple of hours used to play me out. I was not strong enough for it.

Q. Do you have any difficulty in using the Ditheridge dredger? A. No, sir.

Q. Do you enamel bathtubs? A. Yes, sir.

Q. How many tubs can you turn out in eight hours?

A. Sixteen.

2 Q. Two an hour? A. Yes, sir.

Q. That is high grade tubs? A. Yes, sir.

Q. Were you around when enamelers were using the old banjo dredge? A. Yes, sir.

Q. Do you remember how many the men could turn out of that same class? A. Yes, sir.

Q. How many could they turn out in a turn of ten hours?

A. Oh, ten to twelve tubs; that is the most I ever saw turned out.

CROSS EXAMINATION BY Mr. GROSVENOR:

3 Q. You say you could not support the weight of the old banjo dredge? A. No, sir.

Q. That had to be carried from your shoulder?

A. Yes, sir.

Q. Then the great advantage of this new dredger is that the dredge is held up by a chain?

A. Yes, sir; and there is no weight at all to carry.

Q. And the reason you could do more work is because there was no weight to carry?

A. No weight at all to carry and you can use it twice as fast.

4 Q. And you are further away? A. Yes, sir.

Q. In trying to learn the banjo dredge the chief difficulties were first the weight being on you— A. Yes, sir.

Q. Second, you are too near it?

A. Yes, sir; couldn't stand the heat.

Q. Did you have any difficulty learning the tapping motion? A. Yes, sir; I could not tap it at all.

Q. Those are the three objections? A. Yes, sir.

Q. When was it that you tried to learn to use the banjo dredge?

A. Right after I started in to work up there, about seven years ago. 1

RE-DIRECT EXAMINATION BY MR. NOBLE:

Q. Can you get your enamel on smoothly and evenly with the Ditheridge dredger? A. Yes, sir.

Q. Is the inspection for defective ware greater or less in the Mott Works than it was when you commenced?

A. Oh, it is just about the same now, sir; they are just as strict now.

Q. They are just as strict now? A. Yes, sir.

Q. I forgot to ask you how many tubs you could make in a turn with the Ditheridge dredger? 2

A. I work ten hours and I can turn out from 18 to 20, sometimes 22; it depends on the heat that I have in the fire.

Q. Did you ever know of any other men besides yourself who had difficulty in learning to use the banjo dredge?

A. Oh, yes, sir.

Q. What were their difficulties?

A. Just the same as myself; they could not use them.

Q. Did you ever know any of those men who had any difficulty learning the Ditheridge dredge? A. No, sir.

Q. You have seen new men come in and learn how to use the Ditheridge dredger? A. Yes, sir; inside of a week. 3

RE-CROSS EXAMINATION BY MR. GROSVENOR:

Q. Did you ever try to use a long-handled dredge where the weight was suspended above like Exhibit No. 279?

A. No, sir.

Q. And which enabled you to stand further away from the tub? A. No, sir.

Q. Do you know anything about the making of the powder? A. No, sir.

Q. Why do you laugh? 4

A. Because if I did I would not want anything more, if I knew how to do that.

Q. You mean you would get a good deal more wages?

A. Yes, sir; there is a patent on that.

Q. It is a secret? A. Yes, sir.

Q. And the men who make it get good wages, I suppose?

A. I guess they do; they get more than I do, any way.

Q. I suppose you don't know anything about the molding either, do you? A. No, sir.

1 Q. Is that more difficult too?

A. No, sir; I couldn't tell you anything about the molding.

Q. Or the making of the iron? A. No, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

At this point the hearing was adjourned until Monday, February 20, 1911, at the Post Office Building, in Baltimore, Maryland.

2

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA,
Petitioner,

v.

3

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Defendants.

Post Office Building,

Baltimore, Maryland, February 20, 1911.

Pursuant to adjournment, the taking of the evidence on behalf of the Defendants was resumed this twentieth day
4 of February, 1911, at the Post Office Building, Baltimore, Maryland.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General.
HERBERT NOBLE, Esq.,
CARROLL T. BOND, Esq.,
on behalf of the Defendants.

CHARLES A. FISHER, a witness of competent age, produced on behalf of the defendants, being first duly sworn, testified as follows: 1

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Mr. Fisher, what is your full name?

A. Charles A. Fisher.

Q. Where do you reside? A. 3910 East Pratt Street.

Q. Baltimore? A. Baltimore county.

Q. Where are you employed?

A. A Weiskittel & Son Company's enamel works.

Q. Have you ever been engaged yourself in making enamel ware? A. Yes, sir, I have. 2

Q. What is your position now with A. Weiskittel & Son Company? A. Foreman.

Q. For how many years have you been with A. Weiskittel & Son Company?

A. With the company—do you mean in the enameling business?

Mr. NOBLE: In the enameling business.

A. I have been there practically ever since the plant has been out there; that has been 13 years, I think. 3

Q. Have you ever worked as an enameler in any other work? A. No, sir; I have not.

Q. How long have you been foreman?

A. About eight or nine years.

Q. Did you ever use what is known as the hand dredge in the manufacture of sanitary enameled iron ware?

A. Yes, sir; the hand dredge I have used.

Q. Have you ever used the Arrott or pneumatic air dredger? A. Yes, sir.

Q. Will you describe the kind of dredges you used?

A. One on small ware and one on bathtubs. 4

Q. Describe both of them?

A. The one used on small ware we held in our hands that way (indicating).

Q. The one used on small ware was a long-handled or a short-handled dredge? A. A handle about 3 foot 6 long.

Q. And the one that you used on large ware was the one known as the long-handled dredge?

A. The long-handled dredge; yes, sir.

Q. How long was the handle on that? A. Eight feet.

1 Q. Was that supported in any way?

A. Yes, sir; it was suspended with a chain.

Q. With a sort of counterweight? A. Yes, sir.

Q. Will you describe first the short-handled hand dredge and how it was used?

A. You held it in the left hand like that (indicating) and you held it under your arm.

Q. Under your elbow?

A. Yes, sir; and you used eight or ten pounds of powder in there and you held a beater in the right hand and beat it backwards and forwards all the time you

2 worked.

Q. The short-handled dredge you held in your left hand and supported it under the elbow?

A. Yes, sir; just as you see it there.

Q. And with the right hand you beat on the handle?

A. Yes, sir.

Q. Had an instrument that struck— A. On both sides.

Q. As the instrument went up and down? A. Yes, sir.

Q. How many pounds of powder did you have in the sieve? A. Between six and ten pounds.

Q. Did you have any difficulty with the use of that

3 dredge?

A. Yes, sir; often it caught me in the wrist here (indicating) my wrist would give away and it would knock me, and often it would spoil a piece of ware.

Q. Did you suffer any inconvenience from hammering with your other hand? A. Yes, sir.

Q. What was that? A. The strain.

Q. The strain on the wrist? A. Yes, sir.

Q. With the manipulation of that short-handled dredge did you have any difficulty in putting the powder just where you wanted to deposit it?

4 A. We could not put the powder just where we wanted it, because the beat was irregular.

Q. Did that have any effect with respect to the amount of powder put on in different places?

A. Yes, sir; it would cause it to come down in grooves or waves; often Mr. Weiskittel came in and he would say to me, Charlie—

Mr. GROSVENOR: I object to that. I object to anything that Mr. Weiskittel said to him.

Q. Was that with reference to this ware you were making? 1

A. Yes, sir; he would say, you are not at Atlantic City; that looks like it is seasick. That was caused by that beat.

Mr. GROSVENOR: I object to that.

Q. Was this comment which Mr. Weiskittel made to you a criticism upon the ware you were making? A. Yes, sir.

Q. Was it a correct criticism?

A. To the best of my knowledge it was, because the ware was rough.

Q. Was the ware which you made and which you are now talking about in fact wavy? A. Yes, sir. 2

Q. The enamel on it in some places was thick and in some places thin? A. Yes, sir; it was uneven.

Q. You used this short-handled dredge, then, if I understand you, on small ware? A. Yes, sir.

Q. What do you mean by small ware?

A. Such as lavatories and sinks and backs and such ware as that.

Q. On what kind of ware did you use what you called the long-handled hand dredge? A. On bathtubs.

Q. Will you describe the way in which you used that? 3

A. That dredge was suspended, the hand dredge, that is—

Q. The hand dredge?

A. Yes, that was suspended by a chain to a place on the handle about 18 inches from the dredge and we would hold the dredge against our side here (indicating).

Q. The handle of the dredge you held against your side?

A. Yes, sir; held it against the side and beat with this hand (indicating).

Q. Did you have any trouble in the use of that hand-dredge in point of weight or in point of labor? 4

A. We had no trouble with the weight, but it was the labor; we had trouble controlling that dredge with one hand.

Q. With the hand which you held that dredge you had to guide it? A. Yes, sir; had to guide it.

Q. Did you have any difficulty depositing the enameling powder on the bathtubs with the use of that dredge?

A. Yes, sir.

Q. Describe what those difficulties were.

1 A. In swinging this dredge backwards and forwards, if you notice, it goes around and forms a circle, and we threw more powder on both ends than in the center, and there was always a place in the middle of the side that we did not get the amount on that we should.

Q. Then the powder was thick on the ends of the tub?

A. Yes, sir.

Q. And thin in the center? A. Yes, sir.

Q. Did that apply to the entire tub? A. Yes, sir.

Q. To the sides and bottom?

A. Yes, sir; it was always rough, because you could not
2 get that regular beat; often a man's arm would play out on him. My arm has played out when I have been half through with a tub.

Q. Did that have any effect on the manufacture of that tub? A. Yes, sir.

Q. What was the effect?

A. The tub cooled off because we were not able to put the enamel on there quick enough for the tub to take it; then the enamel would fall off when we put it in the furnace.

Q. What did the effect of striking the handle have on
3 the manner in which the powder came out?

A. It packed the powder in the dredge.

Q. And how did the powder come out of the dredge and fall on the tub?

A. It would generally come out more around the circle and not in the center.

Q. Did the powder come out in a continuous flow or in beats? A. In beats.

Q. What effect did that have on the tub as to making it even? A. It was impossible to get it on there even.

Q. Did that have any effect on the quality of the ware
4 that you were enameling? A. Yes, sir.

Q. What was the effect?

A. The firm had to sell such tubs as seconds.

Q. Is it any advantage to get the powder on the tub smoothly? A. Yes, sir.

Q. What advantage?

A. When we get it on smoothly it melts down nicely and makes a first class tub and we get it on there thinner, and naturally it will stand the expansion and contraction of the tub better as you throw hot or cold water in it.

Q. You spoke of seconds and firsts? A. Yes, sir. 1

Q. What do you mean by that?

A. A tubs are tubs that we can send out as first class tubs.

Q. That is A tubs? A. Yes, sir.

Q. And what is the next class of tubs? A. Seconds?

Q. Or B tubs? A. Yes, sir.

Q. Did you manufacture tubs for any length of time?

A. Well, I myself have not made many of them; I have worked at them time and again, but I am right there in the shop seeing them made and instructing the men every day. 2

Q. Now, when they used the hand dredge in the manufacture of tubs, how many hours did the men work on a turn? A. Worked eight hours.

Q. Will you tell me your best recollection of the number of tubs on an average that the men were able to get of A class and the number that they were able to get of B class when you used the hand dredge?

A. Well, I could base it on about 5 per cent. of A tubs and 95 per cent. of B.

Q. Now, when was the air dredger introduced into the Weiskittel works? A. Along about June 1st, 1910. 3

Q. 1910; now, give me your best recollection of the number of tubs which the same men were able to turn out of the class A and class B in a turn in percentage, if you can do it that way?

A. About 75 per cent. of A's and 25 per cent of B's.

Q. Will you tell me whether the men were able to stand the work easily when they used the hand dredge or not?

A. I have often had to go there to help them out myself; they would stop. They would be unable to finish the tub and my assistant has helped them too.

Q. What was the reason? 4

A. Their arms would give away on them.

Q. From the labor of beating the handle? A. Yes, sir.

Q. Were the men obliged to lay off or could they always finish their turns? A. No, sir.

Q. Was it a matter of frequent or infrequent occurrence that the men had to stop on their turns?

A. It was a frequent occurrence.

Q. What is your best recollection of the number of tubs

1 which men could turn out by using the hand dredge in a turn of eight hours?

THE WITNESS: Using the hand dredge?

MR. NOBLE: Yes, the hand dredge; tell me the average number they turned out?

A. Between 11 and 12.

Q. And of those, I understood you to say, they would get about 5 per cent. of A tubs and 95 per cent. of B tubs?

A. Yes, sir.

Q. About how many tubs on an average were those
2 same men able to turn out using the air or Arrott dredger?

A. Well, on an average of—

Q. I mean the same turn of eight hours?

A. From 14 to 16 tubs—I would say—or make it 13 to 16.

Q. Of the 13 to 16 tubs which they turned out using the air dredger, I understood you to say they would get about 75 per cent. of A class and 25 per cent. B class, is that correct? A. Yes, sir.

Q. What is the difference between the A class tub and the B class?

3 A. An A class tub is a tub that has a much smoother finish, the enamel is put on more evenly and it is more durable; that is to my estimation it will stand more.

Q. You said something a while ago about the powder falling off and falling down in rolls when they used the hand dredger; explain more fully what you mean?

A. In swinging the dredge backward and forward you get what we call lumps; when a man shoves his fork in there to take that tub up to put it back in the furnace, the least little jar jars that powder down into rolls and that melts there and makes a lump in the corner and where
4 it drops from it leaves dents; the powder drops out and leaves dents.

Q. With which dredge, the hand dredge or the air or Arrott dredger can you get over the surface of the article you are enameling more speedily? A. The air dredger.

Q. Is that any advantage? A. Yes, sir.

Q. What advantage is that?

A. You can get the enamel on there much quicker while the enamel is hot, and it fuses to the iron much better and we get it back in the furnace before it is cooled off.

Q. What is the color of the tub when you take it out of the furnace to enamel it? A. A very light cherry red. 1

Q. You say it is an advantage to get the enamel on there while the tub is hot? A. Yes, sir.

Q. Why is it an advantage?

A. Because it melts quicker and you get it on before the iron is cool; cast iron is porous, and you get the enamel on while it is hot and it is admitted to the pores and it sticks that much faster.

Q. And when the pores close up they close up and hold the enamel that much tighter? A. Yes, sir.

Q. What is the advantage of getting the enamel on thin and smooth? 2

A. You get it on more even, and as I stated before, I consider it more durable; it would stand more, because it would resist the expansion and contraction of the casting better than if it was on heavy.

Q. Suppose a tub or enameled article which had the enamel on thick in one place and thin in another would get a blow, what would be the effect of that blow?

A. If you take and give a piece of casting with a heavy coat of enamel on it a blow it is very apt to fly off.

Q. The enamel is apt to fly off? A. Yes, sir; very often. 3

Q. And if it is thin, what would be the effect of that same blow? A. It is not apt to hurt it.

Q. Was there any difference in the way you had to handle the castings in putting them in or taking them out of the furnace in using the hand dredge or the Arrott dredger? A. No difference; the same system.

Q. Did you have to use any more care?

A. We had to exercise more care under what we called the hand dredge.

Q. Why?

A. Because as I stated, we did not get the powder on even and it did not fuse to the iron as it should and as they put the fork in there to take it up it jars the enamel down, while with the air dredger we could get it on the iron while it is hot and get it back in the furnace much quicker. 4

Q. Can you say whether or not in using the pneumatic or air dredger, that is the Arrott dredger, whether the powder fuses on the iron before you have to put it back in the tub or not?

THE WITNESS: In the furnace, you mean?
MR. NOBLE: Yes.

A. Yes, sir.
Q. That is because you can get it on quicker?
A. That is because you can get it on quicker.
Q. And because the tub is at a high heat?
A. Yes, sir; it still holds its heat; it is the difference of half the time in putting the enamel on.
Q. Now, just let me ask you about that: Can you give a relative statement of how much the difference is in time in putting the enamel on by the hand method and by the Arrott method, assuming that your tub when you take it out of the furnace, or the article that you are going to enamel, when you take it out of the furnace, is of the same heat?
A. It will take one-third longer to put it on with the hand dredge than it will with the air dredger.
Q. How do you heat your furnaces at the Weiskittel plant? A. With coal.
Q. You do not have any natural gas here? A. No, sir.
Q. Have you changed the weight of your castings or patterns since you introduced the Arrott dredger in the Weiskittel works? A. No, sir.
Q. Will you tell me whether or not the castings could be made lighter since you use the Arrott dredger if you saw fit to change your patterns?
A. Yes, sir; they could be made lighter.
Q. Why could they be made lighter?
A. Because we get the enamel on much faster.
Q. And it still retains the heat?
A. And still retain the heat.
Q. How many men have you on a furnace?
A. Three on a furnace.
Q. One is the enameler?
A. One is what we class as first man, and the second and third men; the first man does the enameling on the inside of the tub, and the second man does the forking and rimming, and the third man fires the furnace and turns the table.
Q. The duty of the third man is to fire the furnace and turn the table? A. Yes, sir.

Q. If you were to introduce an air table to turn the tub, could you dispense with the services of one man? 2

A. Well, providing we were running three or four furnaces we could take one man to fire the furnaces.

Q. In other words, the question with you would be that you had to have somebody as a fireman?

A. That is the idea.

Q. That is why you keep three men on a dredge?

A. On the furnace.

Q. On the furnace, I meant to say? A. Yes, sir.

Q. Have you tried any experiments recently with the same men who have been using the air dredger since the first of last June and having them use the hand dredge in enameling tubs or other articles? A. Yes, sir; I have. 3

Q. Were these men whom you had use the hand dredge in your recent experiments men who previous to the first of June had been accustomed to using the hand dredge?

A. Yes, sir.

Q. Had they been in the employ of Weiskittel & Company for a number of years? A. Yes, sir.

Q. And were experienced enamelers?

A. Experienced enamelers.

Q. Will you please tell me the result of their use of the hand dredge in these recent experiments? 3

A. Well, they all complained to me about it; they asked me to please give them the air again; they said it would be impossible for them to hold out if we did not give them the air again.

Q. Were there any differences in the quality of ware which they made in those experiments? A. Yes, sir.

Q. What was the difference?

A. The loss of ware and seconds.

Q. As I understand you, the same men made a great many more seconds by the use of these hand dredges during these experiments than they had been making while they were using the air dredger; is that correct? 4

A. Yes, sir.

Q. Now, did you use the same mixture of enamel in these experiments that you have recently been making that you used and have been using since the introduction of the air dredger? A. Precisely the same.

Q. Will you tell me whether there has been any difference in the Weiskittel works in the cast iron that you

ameling since the introduction of the Arrott dredger, he cast iron which you used before, when you had the dredge?

Mr. GROSVENOR: I don't think this witness has testified that he had any knowledge of the cast iron business.

There have been no changes made in the iron at all. That is within your knowledge, is it? A. Yes, sir. Now, during the period of these experiments with nd dredge which you have recently been making, did se interchangeably the same castings when you were ng with the air dredger and when you were dredging he hand dredge? A. Precisely the same castings. What is the difference, Mr. Fisher, in your opinion, quality of the enameled ware which you are able to with the Arrott dredger and the hand dredge?

THE WITNESS: What is the difference in the quality, did you say?

Mr. NOBLE: Yes, in the quality.

Well, the air dredger makes a superior piece of ware other dredge, and without it we could not make the hat we are making with the other dredge.

Have you changed the size of the mesh since you in- ed the air dredger in your works? A. Yes, sir.

What change has been made?

From 30 to 40 and 50.

That is, when you used the hand dredge you had a sh? A. A No. 30.

And with the use of the Arrott dredger you have a l 50 mesh? A. Yes, sir.

With which dredge can you use a finer enamel; with nd dredge or the Arrott dredger?

A finer enamel—

Mr. NOBLE: Yes, with which dredge can you use the finer powder?

THE WITNESS: The finer powder or finer gauze?

Mr. NOBLE: Why, the finer gauze?

With the air dredger.

Why?

Because with the hand dredge it beats it down, while

with the air dredger it is a vibrator and it keeps the powder dropping over the bottom of the tub that way (indicating), just as with a grater. 1

Q. How does the powder come out when you use the air dredger? A. It comes out regularly.

Q. In a continuous flow? A. Continuous flow.

Q. With the air dredger you get a continuous flow and with the hand dredge you get— A. Jars.

Q. So that the powder comes out in puffs? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Can you get enamel which is put on with the hand dredge on a casting off more easily or less easily than you can enamel which is put on the same kind of casting under the same conditions with the air dredger? 2

A. In my experience we can get off that which is put on with the hand dredge easily.

Q. That which is put on with the air dredger adheres more closely? A. Yes, sir.

Q. It stays on better? A. Yes, sir.

Q. I understood you to say that sometimes in the use of the hand dredge that the iron would cool before you could get the enamel on? A. Yes, sir.

Q. Is that correct? A. Yes, sir. 3

Q. Did that cause your company to lose that piece of enameled ware?

A. It causes them to lose that enamel that went on that tub.

Q. In other words, you had to chip that off?

A. Yes, sir.

Q. With which dredge, the hand dredge on the one hand or the air dredger on the other, do the enamelers make the most money? A. With the air dredger.

Q. With which dredge, the hand dredge on the one hand or the air dredger on the other, are you able to get the most use out of the furnace? A. With the air dredger. 4

Q. With which dredge, the hand dredge on the one hand or the air dredger on the other, are you able to use the least enamel? A. With the air dredger.

Q. With which dredge, the hand dredge or the air dredger did the men have freest use of their hands?

A. With the air dredger.

Q. With the hand dredge they only had one hand to guide with? A. Yes, sir.

1 Q. And with the air dredger they have both hands to guide with, is that correct? A. Yes, sir.

Q. With what kind of heating material can you get a hotter furnace, natural gas or coal?

A. You can get a more regular heat from gas than you can from coal.

Q. Is what you have said about the quality of the ware as to bathtubs and the greater speed with which they can be manufactured and so on, true of small ware?

A. Yes, sir.

Q. So that if I understand you, the enameler can make
2 better wages for himself, better ware for his employer, more pieces of ware for his employer, with the air dredger than he can with the hand dredge; is that correct?

Mr. GROSVENOR: I object to that as leading.

A. Yes, sir.

Q. Have I correctly stated your testimony, then, in that question? A. Yes, sir.

Q. Which is the easier work upon the man?

A. The air dredger.

Q. Can you give any relative statements of the dif-
3 ference from your experience and observation?

A. Yes, sir; the man with the hand dredge has to stand there and beat it, as I stated before, beat it with his hand, while with the air dredger he just stands there and holds it and works it with a valve.

Q. With the air dredger you get a sort of circular motion? A. Yes, sir.

Q. Can you do that with the hand dredge? A. No, sir.

Q. Is that an advantage with the air dredger?

A. It is an advantage over the hand dredge.

Q. How is that an advantage?

4 A. Because you have both hands to control the dredge with.

Q. And that is due to the fact that you can use both hands? A. Yes, sir.

Q. Which is possible when using the air dredger but not when using the hand dredge? A. Yes, sir.

Q. I am going to ask you some questions which were asked the other day by counsel for the Government of a witness; do you know Mr. George Shield? A. Yes, sir.

Q. Of the Dawes & Myler Works of the Standard Company? A. Yes, sir. 1

Q. Mr. Grosvenor asked Mr. Shield this question: "Now, this air dredger is a useful tool, is it not, in the manufacture of sanitary enameled iron ware?" What would be your answer to that question? A. It is.

Q. He also asked this question: "And it is a valuable tool in the manufacture of Sanitary enameled iron ware?" What would be your answer to that question? A. It is.

Q. He also asked: "Is it an essential tool? You understand the difference?" What would be your answer?

A. It is. 2

Q. It is essential? A. Yes, sir.

Q. He also said: "Is it absolutely necessary for you to have that Arrott dredger in order to make sanitary enameled iron ware?" What would be your answer to that question? A. It is.

Q. He also asked: "It is necessary?" What would be your answer to that question?

A. It is necessary to turn out first class goods.

Q. Now, Mr. Fisher, I show you Petitioner's Exhibit No. 278 and ask you what it is?

A. That is what we call a hand dredge. 3

Q. That is what we called here in the testimony a short-handled hand dredge? A. Yes, sir.

Q. The dredge you have spoken of was similar to that dredge? A. Yes, sir.

By Mr. Grosvenor:

Q. That is the short dredge used on small ware?

A. On small ware; yes, sir.

By Mr. Noble:

Q. Now, I show you Petitioner's Exhibit No. 279, and ask you if that is what you have referred to in your testimony as the long-handled hand dredge? 4

A. That is the long-handled hand dredge; yes, sir.

Q. I now show you Petitioner's Exhibit No. 280 and ask you if that is what you have referred to as the Arrott or air dredger? A. That is one of them.

Q. Now, on Exhibit No. 279 I call your attention to a piece of iron fastened on the handle about 18 inches from the sieve itself; I ask you if it was about that place that

1 the hand dredges that you used in the Weiskittel works were suspended by a chain? A. Yes, sir.

Q. I also call your attention to a similar iron clamp on Exhibit No. 280, being the Arrott dredger, and ask you if that is similar to the supports which you have in the Weiskittel works on the air dredger?

A. It is, but we use a longer handle.

Q. You use a longer handle? A. Yes, sir.

Q. How long is the handle on the Arrott dredger which you use in the Weiskittel works?

A. Between five and six feet, that is, on the tub.

2 By Mr. Grosvenor:

Q. That is your handle on the Arrott dredger is five or six feet longer?

A. No, sir; it is five or six feet long; our old hand dredge handle is eight feet long; I measured it the other day to be sure of it.

By Mr. Noble:

Q. Have you measured the handle on your Arrott dredger? A. No, sir.

3 Q. But your best recollection is that it is between five and six feet long?

A. Yes, sir; that is on the tub; on the small ware we use a short handle.

Q. To what do you attribute the quality of enameled iron ware which you have been able to get and which you have described, with the use of the Arrott dredger—to what do you attribute the fact that you have gotten out that kind of ware?

A. I attribute that to the fact that we can use a finer gauze which sifts the enamel finer and we can get it on the

4 iron quicker.

Q. And that is due to what?

A. To the use of the air dredger.

Q. And the blow which you get with the air dredger, can you describe how rapid that is?

A. It is a continuous flow because the hammers are supposed to hit between seven and nine hundred per minute.

Q. Times per minute? A. Yes, sir.

Q. Can you give me a good estimate of how many times

you could hit with your hand when you use the old hand dredge? A. I might say 150. 1

Q. So there is that much difference which you have mentioned between the two? A. Yes, sir.

Q. And with the air dredger you get a continuous flow of enameling powder? A. Yes, sir.

Q. Whereas with the other you get it in intermittent puffs? A. Yes, sir.

Mr. NOBLE: That is all, I think.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Where is your factory, Mr. Fisher? 2

A. Lombard and Twelfth Streets.

Q. Is that far from here?

A. Twenty minutes by the cars.

Q. You say that you are the foreman out there?

A. Yes, sir.

Q. Does that mean the foreman of the whole works?

A. No, sir.

Q. Foreman of what department?

A. The enameling department.

Q. Does that include the making of the powder?

A. Yes, sir. 3

Q. Does it include the making of the cast iron of the tubs? A. I often go over there to look into that too.

Q. Are you foreman of that?

A. No, sir; but I give orders over there as well as in the enameling department.

Q. I am just trying to get your exact duties now; who has charge of the making of the iron?

A. Why, the foundry foreman has that.

Q. Does he analyze the iron, the pig iron?

A. No, sir; he is no chemist.

Q. He is not a chemist? 4

A. No, sir; I don't think so.

Q. Who does that? A. I couldn't say.

Q. Do you make the powder? A. Yes, sir.

Q. You decide the ingredients which shall go into the powder?

THE WITNESS: I don't understand that.

The last question was then read by the stenographer.

1 THE WITNESS: Do I decide it?
Mr. GROSVENOR: Yes.

A. Yes, sir.

Q. You are foreman of the making of the powder?

A. Yes, sir.

Q. Are you a chemist? A. No, sir.

Q. How long have you had charge of the making of the powder? A. Seven years.

Q. Have you charge of the making of the slush?

A. Yes, sir.

Q. How long have you had charge of the making of
2 that? A. The same length of time.

Q. Seven years? A. About seven years, yes, sir.

Q. Before that seven years what were you then?

A. I was foreman around the shop. I had charge of the enamelers and worked around the furnaces too, learning the men, &c.

Q. But you were promoted seven years ago?

A. Yes, sir; to mixer.

Q. Now, these dredges which have been spoken of—have you one of those hand dredges out there?

3 THE WITNESS: Out at the shops?
Mr. GROSVENOR: Yes.

A. Yes, sir.

Q. Did you have one of those long-handle dredges?

A. Yes, sir.

Q. Will you, after your examination is finished, or if it is not finished before recess, will you go out there and bring in for the next session one of the short—and one of the long-handle hand dredges?

4 Mr. NOBLE: I cannot see any point in that. He says that they are similar to these. I cannot see that it is necessary to collect a batch of these dredges.

Mr. GROSVENOR: I am not bound, certainly, by the statement of the witness that they are similar.

Q. Will you do that?

A. By the decision of the Court. I will if the Court sees fit.

Q. These experiments that you have referred to, when were they made? A. Since the first of the year.

Q. Since January, 1911? A. Yes, sir.

Q. Did you keep any record of those experiments?

A. Not particularly.

Q. Any written records?

A. No, sir, I did not make any of those kinds of tests at all; I tested the men.

Q. Did you watch the experiments?

A. I simply took the air away from them at times and put them back on the hand dredge; then I gave them back the air again. I wanted to be sure whether the men liked the air or not.

Q. You were not sure whether they did?

A. They can speak for themselves.

Q. Well, were you, at that time?

A. I was sure, but I wanted to test them out.

A. Yes, sir; on the tubs and have it still suspended on is that right?

A. Yes, sir; on the tubs and have it still suspended on the tubs.

Q. Just the way you had it on the long-handle dredge?

A. Yes, sir.

Q. And you simply cut the air out and let them w them without the air?

A. No, sir; not the same dredges; used different dredges altogether.

Q. Then you put the long-handled dredges back?

A. Yes, sir.

Q. How many tubs did you make that way, do you know?

A. No, I couldn't say; I did not keep a record of them.

Q. For several days were you making these experiments?

A. I made these at night and day too—both night and day too.

Q. Who directed you to make the experiments?

A. I done it myself; nobody directed me to do it.

Q. Who suggested it to you?

A. I suggested it myself.

Q. Did you stop the men working on the tubs for these experiments?

A. These men did not know anything about what I was doing. I just stopped them myself and they made a kick and they wanted the air again; I found that we could not hold our men without the air dredgers.

Q. Why were you so anxious to find that out at that time?

1 A. Why was I so anxious to find out—I just wanted to satisfy myself whether the men could get on with or without them, because if I was called up I wanted to speak the truth.

Q. You knew you were going to be a witness at that time?

A. No, sir; I did not know it.

Q. Well, did you think you were going to be a witness?

A. No, sir; I had not had the least idea.

Q. Did you have any talks with Mr. Weiskittel about it?

A. No, sir.

Q. Did you know that Mr. Weiskittel had any confer-
2 ences with any of the other defendants about what the defense was to be in his case?

Mr. NOBLE: Objected to.

A. No, sir.

Q. Had you talked to him about the suit?

THE WITNESS: In regard to the defense?

Mr. GROSVENOR: Yes.

A. No, sir.

Q. When did you first learn that you were going to be a witness in this case?

3 A. Last week—I think it was last Thursday; I am not positive. It was either Thursday or Friday, I think, the first I knew of it.

Q. Who told you?

A. Why, Mr. Weiskittel gave me notice that I was to be a witness.

Q. Did you tell him when you made those experiments?

A. No, sir; I did not tell him that until today; Mr. Weiskittel did not know anything about it until today.

Q. You cannot give any reason, then, for your making those experiments in January?

4 Mr. NOBLE: The witness has already given the reason. I object to the question.

Mr. GROSVENOR: Just read the question.

The stenographer then read the last question.

A. I just done it to see whether my men really could do as good work with the hand dredge as they did with the other or see how they liked it. The reason was that it is just like everything else when you start to change a man or learn him to do anything he gets awkward; now, there was a couple of

them that did not like the dredger on the start, and after I got them broke in to using it, which only took a couple of days, I told them about the first of the year, I said, Well, boys, I think I will cut the air out altogether. I took the air away from them and they made a kick, they come to me and told me that if I did not put the air back they could not stand it. That is why I made the test, to see how they would like it after using it for a while. 1

Q. You had not made up your mind, then, up to that time that you could not go on with the hand dredge?

A. Yes, sir; I knew it from the start, but my men had been accustomed to using the old hand dredge before that and it was only a couple of weeks until they got used to the air dredger, and my men have now told me only two weeks ago that they would not work with the old hand dredge any more. 2

Q. They like the air dredger? A. Yes, sir.

Q. But they had worked the old hand dredge?

A. Yes, sir; there is a man sitting right in this court room that used the old hand dredge, I venture to say, nine years ago.

Q. Did he work it continuously nine years?

A. Up until 1910, when we put the air dredger on. 3

Q. And he was one of the men who did not want a change?

A. He did not want a change then, but now he would not use the hand dredge.

Q. And in those nine years you had been selling the ware, had you not?

A. The firm was, I am not the firm; I had the making and they had the selling.

Q. They made pretty good ware during those nine years?

A. Tolerably fair, but not as good as we make now.

Q. It was good ware, though? A. Not so good— 4

Q. But it had a good sale?

A. Yes, sir; but not as good as it could be; if you would go around the country you would find that out. I am ashamed of the reputation of our place for the time I have been down there; you may smile, but what I am speaking is the truth.

Q. Why do you keep looking at Mr. Weiskittel?

A. I am not looking at Mr. Weiskittel; I am looking at you.

1 Q. Have you made any change in the powder in the last seven years? A. Yes, sir.

Q. Have you made any change in the cast iron?

A. We have not made any change in the cast iron, but that is seven years for the powder, now, mind you.

Q. But you did make changes in that time? A. Yes, sir.

Q. You found some powders worked better than some other kinds?

A. Altogether depending upon the conditions?

Q. What do you mean by the conditions?

A. Why, the different chemicals come in.

2 Q. Different chemicals come into the iron?

A. You asked me about the enamel.

Q. This is an intricate business, this making of enameled ware?

A. You asked me about the enamel and you asked me if the powders were changed in the last seven years and I said, Yes, and you said, Why were they changed? And I said because there are chemical changes.

Q. Why are there?

A. Because chemicals that are dug out of the earth are not all the same; they vary in the analysis.

3 Q. Have you made any changes in your cast iron in the last seven or eight years? A. Not to my knowledge.

Q. You do not have the analysis of that, though?

A. No, sir.

Q. State once more why you have changed your powder off and on in the last seven years?

A. I changed it to meet conditions.

Q. What conditions?

A. I don't think I have a right to answer that question, because that is a thing pertaining to the secrets belonging to the business, to the manufacturing.

4 Q. The formula for making the powder is one of the secrets of the business?

A. Yes, sir; but I will state this much; I have not changed my powder no way in the last year.

Q. You have in the last seven years?

A. Yes, sir; but not in the last year or in the last—well, I will say a little longer, but I am satisfied with a year.

Q. The formula for making the powder is one of the secrets of the business, is that right? A. Yes, sir.

Q. Why is it secret?

Mr. NOBLE: I do not think the Government ought to go into the question of that. Upon request of counsel for the Government I did not go into it. 1

BY MR. GROSVENOR:

Q. Why is it a secret?

A. It is the same as anything else. That is my living. I do not propose to give it to anybody else and let them come in and take my place for half the salary I am getting.

Q. How about the slush coat, is that one of the secrets?

A. Yes, sir.

Q. Would you tell anybody what that is? A. No, sir. 2

Q. Can you make good enameled ware unless you have a good slush coat, the proper ingredients?

A. You have to have a good first coat and a good enamel, both.

Q. Both of those things? A. Yes, sir.

Q. Both of those things are essential, aren't they?

A. Yes, sir.

Q. Your enamel is better than some others?

A. That I would not like to say; I don't know what the other men are making. I only know what I am making myself. 3

Q. Did you change the enameling powder after you became the foreman seven years ago of the enameling department? A. Slightly.

Q. You got a better enamel, is that right? A. I think so.

Q. Worked more satisfactorily, did it? A. I think it does.

Q. You did not have so many seconds?

A. Have just as many seconds as then; yes, sir; just as many as then.

Q. Why do you consider your powder better than the powder that was used before that?

A. Why, because the powder stands better. 4

Q. What do you mean? A. It stands the wear better.

Q. It fuses more readily? A. No, I could not say that.

Q. It retains its polish better?

A. Yes, has a better gloss and a better color.

Q. That is the only way it changes?

A. It shows up that way; that is one of the great things in the business, you want a shiny piece of ware; just like having a house painted you want it bright and shiny.

Q. Does the quality of the powder have anything to do

with the falling of the enamel after putting it in the furnace?

A. You have that wrong; it is while you are putting it in the furnace; it falls while picking it up from the hood; the quality of the enamel has nothing at all to do with that.

Q. You say the quality of the enamel has nothing to do with that?

THE WITNESS: The falling.

MR. GROSVENOR: Well, describe what falling you refer to.

THE WITNESS: You said the powder falling from the tub in the furnace.

Q. I understood you to say that when you swung the tub on the crane that if it is jarred when it is set down on the angle irons, is that right— A. Yes.

Q. That the powder may fly down from the ends of the tub; is that right?

A. I said in picking it up out of the hood on the table the least little jar would jar it down.

Q. Jar the powder down? A. Yes, sir.

Q. That is after the powder is put on the tub?

A. Yes, sir.

Q. Now, my question is this: In that case where you say the powder might fall after a slight jar, does the quality of the powder have anything to do with its falling? A. No, sir.

Q. Irrespective, then, of the quality of the powder, it will fall; is that right, that is, if it is slightly jarred?

A. If they do not get the powder on there thick enough and they put it on too much on the ends—as I stated in my direct evidence, it will fall; yes, sir.

Q. Have you ever worked in any other factory?

A. No, sir; I have never worked in any other factory.

Q. Have you ever inspected any other factory?

A. I have never inspected any other factory.

Q. Have you ever been over any other factory?

A. I have been inside of them, but not to inspect them.

Q. What factories?

A. The McShane Manufacturing Company.

Q. Are they in business now? A. No, sir.

Q. What sort of a dredge did they use?

A. The hand dredge and the air dredger both.

Q. When was that?

A. I judge about five or six years ago. 1

Q. And they were using an air dredger then?

A. Yes, sir.

Q. And what other factory have you been over?

A. I have been to New Brighton.

Q. That is where you met Mr. Shield, is that right?

A. Yes, sir.

Q. When did you go over that factory?

THE WITNESS: Sir?

Q. When did you go over that factory?

A. I guess that has been about six or seven months ago; 2
longer than that, maybe.

Q. How long have you been using this long-handle dredge?

Mr. NOBLE: The hand dredge or the air dredger?

Mr. GROSVENOR: The long-handle dredge that is suspended, that is eight or nine feet long?

A. I should say twelve years.

Q. You did not get the idea, then, of the long-handle dredge from the New Brighton factory?

A. No, sir, I believe I am the inventor of the long-handle hand dredge. 3

Q. It is very much like this Exhibit No. 279, is it not?

A. Yes, sir; only I believe it is in a little better shape than that one and a little bigger dredge.

Q. But it is suspended? A. Yes, sir.

Q. And it enables the workman to stand a little further away from the tub, that is, further than the air dredger?

A. No, sir, not with the air dredger I am using; my air dredger handle is 5 or six feet.

Q. It is longer than this one (indicating)?

A. Yes, sir; that is the one on the tubs.

Q. The Arrott dredger you use has a longer handle than 4
this Exhibit No. 280?

A. Yes, sir; on the tubs; I put a long handle in my air dredger on the tubs.

Q. You said that the workmen using this air dredger make more money than under the old dredge?

A. Yes, sir; makes more with the new one.

Q. How much more?

A. Gets paid the same price for his ware and there is a difference in the grade of the tubs; there is a difference of

1 five, seven and nine cents in a piece. He can turn out more tubs per day and he can make better ware, and he gets more of these five, seven and nine cents, and so he makes more money, and he averages a couple more tubs a day in the same time.

Q. At your factory you pay the workmen by the piece or the tubs, is that right? A. Yes, sir.

Q. And then they are further classified so that if it is an A No. 1 tub he gets more than if it was a tub not so good? A. Yes, sir.

Q. The tubs are divided into how many classes with
2 reference to the wages of the workmen? A. Two classes.

Q. A and B? A. Yes, sir.

Q. So after the introduction of the Arrott dredger there was no change in the amount paid per piece? A. No, sir.

Q. But he gets more A's?

A. Yes, sir; or firsts—what we term firsts.

Q. Are you the inspector to decide whether the tub is an A or a B? A. I do not inspect them.

Q. Who does that? A. My assistant.

Q. Who is he? A. Ralph McCleary.

Q. Then, in each particular case he determines whether
3 a man should be paid for an A or a B tub?

A. Yes, sir; each man sees his own work, though.

Q. Do you keep a record of the tubs made by each workman?

A. We have records of them right along; we take daily statements and I make up the time.

Q. And then they are paid at the end of the week, I suppose? A. Yes, sir.

Q. Then there has been no change in the keeping of the statements since you changed the character of the dredges, have there?

4 A. Not to my knowledge.

Q. This assistant of yours has been inspecting the work how long?

A. He has been inspecting the work now, I guess two or three years.

Q. How many Arrott dredgers do you have in your factory?

THE WITNESS: In operation at the same time?

Mr. GROSVENOR: No, how many like this (indicat-

ing) have you there now? What would you call this, an instrument or a tool? 1

A. We would call that a dredge; we have got four, as I stated, long-handle air dredgers, between five and six feet long.

Q. Did you make those yourself?

A. Yes, sir; made them ourselves.

Q. How many little ones are there?

A. Then we have got two about four inches in diameter with a short handle like that (indicating) that we use for rimming; then we have two for the small furnace; one is about seven inches in diameter and the other about nine—eight or nine. 2

Q. You did not make all of these at once, did you?

A. Made them to experiment and see which was the best.

Q. And then put them in, one after the other, is that right? A. Yes, sir.

Q. When did you put in your first one?

A. Put in the first one along about June 1; started in with a couple of them; just changed about to see which would work the best; one thing we have always done, and which Mr. Weiskittel has always done, he would say, Charlie, try to see the best way to work your men and to the best advantage, and that is why I put in the air dredger. 3

Q. What do you mean by saying, "to see which would work the best"?

A. Which would work to the best advantage of the men.

Q. The long-handle—

A. Or the short-handle.

By Mr. Noble:

Q. But you are speaking altogether of the air dredger?

A. Yes, sir. 4

By Mr. Grosvenor:

Q. When did you give up using the long-handle hand dredge? A. Along in June we stopped it.

Q. Entirely? A. In 1910.

Q. Entirely?

A. Yes, sir; and we started up and we have used it since, though, as I told you.

Q. Now, I want you to bring into court at the next hear-

1 ing the records which you keep showing that the workmen get more—that is, that the enamelers using the Arrott dredger get more than by using the other. How many of these enamelers are there out there?

A. I have three of them here.

Q. Were these three men working under the old method?

A. Yes, sir.

Q. How long did they work under the old method?

A. One there worked eight or nine years under the old method; one of them did not work very long, and the other worked about four years. They have been working around

2 the furnace.

Q. I want these records brought in just as you keep them you understand?

A. I don't keep no records after the week; I just turn the records over to the office. I just get a daily report and I make up the records from that and turn them into the office.

Q. Do you keep a copy for yourself? A. No, sir.

Q. Mr. Heise is the secretary, is he not?

A. I think he is.

Q. Who has charge of the office there? A. Mr. Heise.

Q. You pronounce it H-e-i-s-e?

3 A. Yes, sir; I think something like that.

Mr. GROSVENOR: Well, you ask Mr. Heise to give those records to you.

Q. Now, were you consulted at all during the early part of 1910 respecting this licensing arrangement which your company entered into with Wayman? A. No, sir.

Q. I do not suppose you know anything about it?

A. No, sir.

Q. When did you first hear about it?

A. When I saw it in the paper.

4 Q. How long does it take to enamel a tub when it first comes out of the furnace, that is, with the Arrott patent?

THE WITNESS: When it first comes out of there?

Mr. GROSVENOR: Yes.

A. I never timed it.

Q. Did you ever take the time under the old dredge?

A. No, sir.

Q. When you say one is shorter than the other you speak from observation and not from having timed it?

A. Just from observation. 1

Q. Did you have anything to do with the molding room?

A. Only to go over there and tell them what I want, that is all.

Q. You did not direct the making of the patterns, then?

A. Oh, no, sir.

Q. Are they working patterns—

A. (Interrupting): Sometimes I do.

Q. Well, who has charge of them out there?

A. It depends altogether on what kind of patterns they are; sometimes they come under me.

Q. What patterns come under you? 2

A. Those pertaining to the enameling business, such as the tubs or sinks or lavatories; something like that.

Q. You said you used to go out sometimes to help an enameler to tap when his arm was tired, is that right?

A. I went out to help them finish up a tub more than once. Often I have done it. I don't understand that word "tap."

Q. Do you mean to imply that the workmen would have to stop the rapping and you would have to do the rapping for him?

A. You used the word "tap"; I don't understand that, 3 and I had to ask you that over again—

Mr. GROSVENOR: Just read him the question over again.

The stenographer then read the question referred to.

A. It is right; yes, sir.

Q. What do you mean by that? Did you have to do the tapping for him?

A. Had to do what we call the beating, had to beat the enamel out. 4

Q. How often did you have to do that?

A. On frequent occasions I had to do it.

Q. What do you mean by frequent occasions?

A. I have done it already sometimes as much as two or three times a day and sometimes would go a week without doing it again.

Q. Sometimes you would go for a month without doing it? A. No, sir; I don't think I did.

Q. Mightn't it be a month?

A. No, sir; I don't think it ever was a month that somebody did not have to have help.

Q. You say you have not changed your castings since you got the Arrott dredger?

A. No, sir, we have not changed the casting.

Q. Your weights have been during the last eight or nine years about the same as the weights of your competitors, haven't they?

Mr. NOBLE: The witness has not shown in his examination that he knows anything about the weights of the tubs of the other manufacturers. I think you should specify the type so that the witness could answer specifically.

A. I don't know anything about the other people's weights.

Q. You don't know then if your weights have been lighter or heavier than the other manufacturers' tubs?

A. No, sir; but I know that we have not changed our weights.

Q. Do you know whether your tubs are lighter or heavier than the tubs of your competitors of similar design?

A. I could not answer that question.

Q. You don't know, is that it? A. That is it.

Q. How many men did you have engaged in those experiments which you testified you had conducted early in January, 1911?

A. I had practically all of my men.

Q. Did you take one night or one day to it or did you prolong the experiments during several days?

A. Oh, I took several—did it frequently since the first of the year.

Q. Since the first of the year? A. Yes, sir.

Q. You have done it very often? A. Yes, sir.

Q. Used the hand dredge sometimes? A. Yes, sir.

Q. And sometimes the automatic dredger? A. Yes, sir.

Q. Was that while the men were on their turns?

A. Yes, sir; the men were on their turns while we were using it.

Q. These men worked on eight hour turns, is that right?

A. They had been, but now they are on six; that is, on bathtubs.

Q. When a man goes on a turn for eight or six hours his

object is to get as many good tubs made during that time as he can; is that right? A. Yes, sir. 1

Q. It is while they were on these turns that you made your experiments? A. Yes, sir.

Q. You asked them to try and— A. No, sir.

Q. Well, what did you do?

A. Just simply shut the air off.

Q. So they could not use it? A. Yes, sir.

Q. And what did they do?

A. I told them there was something wrong with the air and that they would have to go ahead with the hand dredges until the compressor was fixed. 2

Q. That has happened several times?

A. Yes, sir; this year.

Q. Didn't it happen in 1910?

A. Not experiments, but we had one of the compressors to break down then.

Q. When these workmen came to you and said something was wrong with the air and would not work, you say you told them that the compressor was out of condition?

A. Yes, sir.

Q. You did not tell them, then, that you were having an experiment? A. No, sir. 3

Q. The fact was that the compressor was all right, is that it? A. The compressor was all right.

Q. Now, how many times did you get the men to use these long-handle dredges in that way?

A. That I could not tell you, because, as I told you, I did not keep any record. As to anything like that, I would rather the men should answer as to that.

Q. Then they would go along and use the hand dredge, is that right? A. Yes, sir.

Q. And if they did not make as many A tubs they got less pay? A. Yes, sir. 4

Q. And if they made the same they were paid the same?

A. If they made it they got it.

Q. I want you to bring these records for January and February, 1911. Do you understand that? A. Yes, sir.

Mr. Noble: The witness has already said that he turned in his time sheets and has kept no records. He said he turned in his time sheets to the members of the company.

1 By Mr. Grosvenor:

Q. Did you do any of these experiments during the last week?

The Witness: This last week?

Mr. Grosvenor: Yes.

A. I had them to work with the hand dredges last week, the long-handle ones.

Q. What days during last week?

A. I had them work six nights with it.

Q. That is the night turns? A. Yes, sir.

2 Q. Then you have turned those records in?

A. Yes, sir.

Q. When did you do that? A. Turned them in daily.

Q. When, before last week, did you have some of these experiments made?

A. Well, I have had them right along since 1911, going right along with them, experimenting with them.

Q. Take the week before last, did you have experiments during that week? A. Yes, sir.

Q. On the night or day turn? A. Night turn.

Q. Not on the day turn?

3 A. I couldn't say; I didn't keep no record of the day time when I changed the men about; maybe one of the men could answer that question better.

Q. The week before that did you have any experiments?

A. Yes, sir.

Q. When, night or day? A. Night.

Q. And the week before that did you have them?

A. I don't want to go back past the first of the year; I want to be a little careful, because I am here under oath and what I say I want to be the truth; that is why I want to be careful.

4 Q. We only want the truth; this last week you had experiments? A. Yes, sir.

Q. And it was on the night force? A. Yes, sir.

Q. Did you do any during the day time?

A. I don't experiment.

Q. You used the hand dredge, though, during the day time? A. The air dredger during the day time.

Q. You did not use the hand dredge during the day time?

A. No, sir; unless if we did it, it was because of a breakdown or something like that.

Q. If there is a breakdown you go on using the hand dredge, is that right? A. Yes, sir. 1

Q. This last week, then, you used this hand dredge on the night turn? A. Yes, sir.

Q. Was that on account of a breakdown or on account of an experiment?

A. It was on account of an experiment; that is the only thing I can say.

Q. You don't know whether you used the hand dredge during the day time last week?

A. Not unless it was for a breakdown or something like that to hold us up. 2

Q. But you did not make experiments? A. No, sir.

Q. Why can't you call that an experiment?

A. Because it would be an accident—

Mr. NOBLE: I object to that. The witness has been very explicit and candid and full in his testimony.

Mr. GROSVENOR: I disagree with counsel as to the adjectives used.

Q. When you turned the compressed air off so as to have the hand dredge used, you call that an experiment?

A. Yes, sir. 3

Q. But when the compressed air gets out of order and it is not you who shall determine which dredge shall be used, then you call that an accident? A. Yes, sir.

Q. Last week you used a hand dredge during the night but it was by experiment? A. Yes, sir.

Q. You cannot remember whether you used it during the daytime, is that right? A. I cannot say; no, sir.

Q. Now, going back to the week before last, did you make experiments during the night?

A. I used the hand dredge at night, the long-handle hand dredge at night. 4

Q. Is that an experiment?

A. I would call them all experiments when we are not giving them the air to use. If it is shut off by an accident, it is an accident, though.

Q. When it is shut off by accident, though, you then use the hand dredges? A. Yes, sir.

Q. Week before last, though, you used the hand dredges at night?

A. Yes, sir; I have used the hand dredges right along.

1 Q. Right along during this year?

A. Yes, sir; I have told you that.

Q. Every week? A. Practically every week.

Q. What do you mean by practically?

A. Well, I don't want to say every week, because we did not have it every week, but the majority of the weeks since 1911.

Q. Then you were experimenting off and on the whole of 1911?

A. Yes, sir; I was testing the men out; you can put it that way if you want it.

2 Q. How is the power for the compressed air operated?

A. By a compressor.

Q. What is that connected with?

A. We have it connected with steam and we have one belt driven.

Mr. NOBLE: You have what?

THE WITNESS: One belt driven and one steam driven.

BY Mr. GROSVENOR:

3 Q. Are any of these experiments which you have in the night time induced by the fact that it is more economical to turn off the compressed air then?

A. I made the suggestion to Mr. Weiskittel myself. He did not know what my object was. I suggested that we shut the air down at night and it was more than two weeks before I got his consent, and I never told him what I done it for until today. It was me and not Mr. Weiskittel. I did it when I read about this suit in the papers.

Q. Then, during the year 1911, for the purposes of economy, you shut down this compressor?

4 Mr. NOBLE: He did not say that.

Mr. GROSVENOR: Read the question.

The stenographer then read the last question.

A. Not to my knowledge; I made this suggestion to Mr. Weiskittel myself but, in fact, I did use the word "economical" for an excuse to get Mr. Weiskittel's permission to shut it down. I used that for a purpose.

Mr. GROSVENOR: Now, I want this witness to bring

those records referred to or to come and testify why 1
he has not brought them.

Mr. NOBLE: The witness has testified that those records for which you ask are records which were turned in by him, day by day, to the officers of the company; that they are not in his possession and that he has kept no copies of them.

Mr. GROSVENOR: These papers are for the purpose of legitimate cross examination. He has testified that the men, under certain conditions, made more money than under others, and he also testified as to certain experiments; he also testified that records 2
were kept of those experiments.

Mr. NOBLE: If counsel for Government wants the records he can subpœna them.

Mr. GROSVENOR: I also want those dredges.

Mr. NOBLE: We will be here another day. Won't that do?

Mr. GROSVENOR: No, I want them before the examination is through. I want them at this hearing. We will adjourn, now, if that is satisfactory, until two o'clock.

THE WITNESS: It will be impossible for me to go 3
out and get them in that time.

Mr. GROSVENOR: Then, we will suspend with your cross examination afterwards and you can go out and get them.

Examination Suspended.

At this point a recess was taken until 2 o'clock.

After Recess.

Theodore A. Rettaliata, official court stenographer in the 4
Circuit Court of Baltimore City, having been duly sworn by the Commissioner to truly and impartially transcribe testimony in this case, proceeded to take the following testimony.

CHARLES A. FISHER (resumed):

CROSS EXAMINATION BY Mr. GROSVENOR (continued):

Q. Mr. Fisher, returning now to that point and to that question of the experiments. I want to get that a little more clearly on the record. You testified that those experiments

were made since January 1st, 1911, is that right? A. It is.

Q. And they were made without your telling Mr. Weiskittel, is that right? A. Yes, sir.

Q. You did not know at that time you were going to be a witness? A. No, sir, I did not.

Q. These experiments were made mostly of a night time, is that right? A. Yes, sir.

Q. All in the night time, as far as you can recall?

A. I won't say that; I kept no record of the day time, and that is the reason I will not answer yes or no as to any day time; that is the reason I will not do it, because I could not clearly do it, conscientiously do it, and speak the truth; I could not say what time it was. I want to tell the truth, and that is what I am going to do, and if I cannot tell the truth I won't answer the question.

Q. Let's see how nearly we can get to it. Last week they were all at night?

A. They were all at night last week, yes, sir.

Q. And these experiments were all of two kinds, some during the night when you turned off the air compressor, is that right? A. Yes.

Q. And sometimes during the day time with the air compressor? A. Yes, sir.

Q. Some time during the day time when the air compressor was out of commission, is that right? A. Yes, sir.

Q. Then all these experiments were during the night time, except those which occurred during the day time, owing to the fact that your air compressor was out of commission, is that right? A. In the day time?

Q. Yes.

A. That was owing to the air compressor being out of commission.

Q. Then whatever experiments you had in the day time were had owing to the fact that the air compressor was out of commission? A. Yes.

Q. But those which you had during the night time were had because you turned the air compressor out? A. Yes.

Q. Off? A. Yes, let the air compressor down, yes.

Q. Now you testified that about the 1st of January you said something to Mr. Weiskittel about the economical advantage, what was that?

A. I told you that it was just simply this, that our business did not justify us to run any more than one furnace,

and hardly that, and I made the suggestion to Mr. Weiskittel 1
that we shut the compressor down at night.

Q. At night?

A. Yes, on account of we didn't have the sales for the goods, our place being stocked up, and having been putting our men on six hours turn. Then I said we were justified in not running the compressor at night for one furnace, that is the plea I made to Mr. Weiskittel. We were not justified in having an engineer and fireman and all of that for the one furnace; I said we were not justified in doing it.

Q. This compressor, or the engine running the compressor, was not used for any other purpose except the auto- 2
matic dredger?

A. For the automatic dredger and to light the place.

Q. How did you light your place?

A. By electricity. As I stated in my evidence, we had a belt driven air compressor, and the same engine that operated that compressor operated the generator.

Q. For the electricity? A. Yes.

Q. But you could not use it for both at the same time?

A. Yes, you could use it for both at the same time. You see it is belt driven, you understand what that is, and you run a belt from the engine to a shaft, what we call a main 3
shaft or something, I do not know what you might term it, some call it a gang shaft, and the belt is run from the engine to that shaft and from that shaft we run down belts to the compressor and also to the generator which generated the current, both on the same engine.

Q. You told Mr. Weiskittel then that it would be more economical not to use the air compressor at night for the one furnace, is that right? A. Yes.

Q. And you would then put your men, you told him, on the hand dredge, is that right? A. Yes, at night.

Q. And at night would cover two six hours turns? 4

A. The way to work is this: we work from 4 A. M. in the morning to 10 A. M.; from 10 A. M. to 4 P. M. and from then to 10 P. M.; from 10 P. M. to 4 A. M. There are three turns for the use of the air dredger and three for the use of the hand dredge.

Q. During the time of the experiments?

A. During the twenty-four hours.

Q. Would be eight hour turns?

A. Six hours. Three of them used the air compressor

1 and three of them used the hand dredge at the same time; that brings it from four to seven in the morning, using the hand.

Q. From 4 in the afternoon to 7 in the morning?

A. From 4 A. M. to 7 A. M. used the hand, and then from 7 A. M. to 10 A. M. they used the air dredger, the same men, and from 10 A. M. to 4 P. M. they used the air, and from 4 P. M. to between half-past 5 and 6 they used the air, and from that time until 10 P. M. they used the hand, and the one turn from 10 P. M. to 4 A. M. they used the hand exclusively.

2 Q. When they were using the hand dredge, the air-compressor was turned off, is that right? A. Yes.

Q. And you told Mr. Weiskittel it would be more economical to have it turned off? A. I certainly did.

Q. Did he agree with you?

A. Yes, after about three weeks,—two weeks, over two weeks he agreed with me. It was between two and three weeks.

Q. After you had been doing it this way he agreed with you?

A. He agreed with me before we done it, before we cut 3 the air out at night.

Q. He agreed with you that to go to the hand method it would be more economical?

A. He agreed for me to do this. He gave his consent for me to go ahead if I thought it was best, that is the way he used the words, "If you think it is best, Charley, go ahead and do it."

Q. Then the reason you turned off the air compressor was because you thought it would be more economical, is that right?

A. I thought that at the time, but it is not, to tell you 4 the real truth, it is not. I thought so too, but I did not do it for that purpose, I done it to test my men as I told you a man with the air dredger could make a better piece of ware than with the hand dredge. There is no economy in pouring anything into a bung-hole and letting it run out of the spigot.

Q. You told Mr. Weiskittel at the time that it was more economical?

A. I told him I thought it would be. I simply used that for an argument to gain my point what I was after.

Q. And you wanted to do what? 1

A. I wanted to prove to the men and the firm and myself that the air dredger was far superior to the hand dredge.

Q. And you began to do this January 1st, 1911?

A. I did not say that.

Q. When was it that you began?

A. I told you along about that time is when I took up the argument with Mr. Weiskittel to get his consent to allow me to do it, and I said it was a couple of weeks before he gave his consent. If I am not mistaken I think that is what I stated.

Q. Then when he gave his consent, you started to do it, 2 is that right? A. Yes.

Q. Then how long did you continue doing it after you started, are you doing it today? A. Yes.

Q. So then at the present time you are shutting down your air compressor at night? A. Yes.

Q. Then you are still continuing these experiments?

A. I am going right along with them, yes, sir.

Q. Going right along with these experiments, as you call them, is that right? A. Well, I cannot say it is.

Q. Don't you call them experiments any more?

A. No more, no, sir. I do not call it experiments any 3 more, because I have done it, and I have satisfied myself about it, because the men have all come to me with complaints that they want the air, and they can do better work with the air.

Q. And you are still making them use the hand when the air compressor is turned off? A. Yes.

Q. During the period you have testified about, you are making them use the hand dredges, is that right?

A. Yes, but I am satisfied that now, after Mr. Weiskittel has heard my statement right here he will make me put the air in again, as long as he has heard my statement. There 4 hasn't been a man before today that has been told of this.

Q. Now, let me ask you frankly, Mr. Fisher, isn't it a fact that when you began to shut off the air compressor at night, the true reason was that which you stated to Mr. Weiskittel, that you thought it was more economical to shut it off at night? A. No, sir.

Q. Then it was for the purpose of making the experiments, is that right?

1 RE-DIRECT EXAMINATION BY Mr. NOBLE:

Q. As I understand you, Mr. Fisher, you have found out again by the use of these hand dredges, during the last two or three weeks, that the tubs made that way cannot compare in quality with the tubs made with the air dredger, is that correct?

A. No, sir, they cannot. I can state one little instance to you of one of my own men on the small ware that has been with me a right good while. He was on the night turn when I had the air off—

2 BY Mr. GROSVENOR:

Q. That is during the time you were making these experiments?

A. I am stating the difference between the air and the hand dredge now with this man. He come down in the morning,—they work eight hours—he came down and says to me, Well, he says, Mr. Fisher, he says, I am glad I am on day turn now. I said, Why? He said, I am going to get all A's now, with the air dredger, he could make good ware, but with the hand dredge he couldn't.

3 Q. Do they get more pay when they make "A" tubs than when they make "B" tubs? A. Yes.

Q. They get more money for the work?

A. Yes, both for small ware and tubs too.

Q. What percentage do they get more?

A. Well, take a four and a four and a half foot tub, they get five cents more for it for "A's" than they do for "B's", and on a five foot tub they get seven cents more for "A's" than they do for "B's", and on a five and a half and six foot tub, they get nine cents more for "A's" than they do for "B's".

4 Q. They get 5, 7 and 9 cents more on the "A" tubs, the dimensions of which you have given, than they would on the "B" tub of the same dimensions? A. Yes.

Q. They get those additional amounts for "A's" and for "B's" they get an amount with the additional amount deducted? A. Yes.

Q. In reference to their losing tubs because they were defective, have you found that true since you have been trying out your men on these hand dredges?

A. Yes, I found it the same way, as I have stated.

RE-CROSS EXAMINATION BY Mr. GROSVENOR: 1

Q. You are today turning off the air at night, is that right? A. Yes, I stated that.

Q. Which means you could not use the air dredger at night?

A. Yes. I expect when I go back the air will be running at night. I guess after Mr. Weiskittel has heard me he will put it in again.

Q. Why do you think so?

A. Because on my own statement I had to acknowledge under oath that I was in the wrong in changing it, and I have to acknowledge the truth under oath. He was right there and heard me. 2

Q. So you think, having heard you under oath, when he goes back to his factory he will change the method?

A. He will change it, yes, sir, I am perfectly satisfied of that.

Examination of the witness concluded.

HERMAN O. GOLDSMITH, a witness of lawful age, having first been duly cautioned, being duly sworn, testified on behalf of the defendant, A. Weiskittel & Son, as follows: 3

DIRECT EXAMINATION BY THE COMMISSIONER:

Q. What is your full name? A. Herman O. Goldsmith.

BY Mr. NOBLE:

Q. Will you state your full name and address, Mr. Goldsmith? A. Herman O. Goldsmith, and—

Q. Where do you reside? A. No. 3503 E. Baltimore St.

Q. Where are you employed?

A. A. Weiskittel & Son Co.

Q. What is your business there?

A. Enameling of bath tubs. 4

Q. How many years have you been with the A. Weiskittel & Sons Co.?

A. I have been with the firm for about nine years, nine or ten years.

Q. During that time what kind of ware have you enameled?

A. Well, I have not been enameling but four or five years.

Q. During the time that you have been enameling, what kind of ware have you enameled?

1 A. Bath tubs and small ware.

Q. Have you enameled both by the use of the hand dredge and the air dredger? A. Yes.

Q. Was the hand dredge which you used similar to Exhibit 279 (indicating Exhibit 279)?

A. Yes, similar to that on the tubs.

Q. You used that on the tubs? A. Yes.

Q. Did you ever use a hand dredge similar to Exhibit 278 (indicating Exhibit 278)?

A. Yes, on small ware.

Q. You used that on small ware? A. Yes.

2 Q. Is the Arrott dredger which you used similar to Exhibit 280 (indicating Exhibit 280)?

A. It is, only the handle is a little longer.

Q. Now, in enameling the small ware, you used a hand-dredge like the short handle one which I showed you, is that correct? A. Yes.

Q. Just tell us how you operated that dredge, won't you?

A. You put your arm here, put it under your arm in this way (indicating).

Q. What was that?

A. You put it under your arm in this way (indicating).

3 Q. The handle resting under your elbow?

A. Yes, in this way (indicating).

Q. The handle is held in one hand and rested under the elbow, and with the other hand you beat with the hammer?

A. We call this a beater (indicating).

Q. You beat with a beater? A. Yes.

Q. Was there any difficulty about the use of that hand dredge in your experience?

A. Oh, yes, it made your arm stiff and your wrist sometimes just fell down and gave away that way (indicating), and you didn't have no more use for it.

4 Q. That is your left arm in which you held the dredge was stiff?

A. Yes, kind of stiff down there (indicating) and often I came home I would have a cramp like in my hand from holding it and in my shoulder too.

Q. That is all on your left arm and shoulder?

A. Yes. On my right hand it would be around the wrist, and often I would go home and I could not raise my arm to wash the back of my neck and especially would that be

so in the summer time, and I would have to drop it, there would be kind of a cramp in it. 1

Q. How much powder did you put in one of these hand dredges, approximately, in weight?

A. I have never weighed it, and I could not tell you.

Q. You say you used these hand dredges on small ware?

A. Yes.

Q. Now, the long handle hand dredge similar to Exhibit 279 which I showed you, was suspended by what?

A. By a wire from the ceiling, an iron chain, a regular chain.

Q. Suspended from the ceiling? A. Yes. 2

Q. How did you operate that?

A. The chain would come down here (indicating).

Q. And fasten to that clamp?

A. Yes. You take the handle right here at the hip (indicating) and beat on it with the beater. If you want to use it on the sides you do this way (indicating), and to get down to the bottom you have to raise it up this way to go down to the bottom (indicating).

Q. So that, let me see if I cannot get that down in some questions. The long handle hand dredge was suspended from the ceiling by a chain. A. Yes. 3

Q. And then you held it under your left arm? A. Yes.

Q. And against your side? A. On my hip.

Q. Then I understand you guided it with your left hand?

A. Yes.

Q. And how did you beat it to get the powder out?

A. Beat it with the right hand like this (indicating).

Q. Was the beater which you had somewhat similar to the one that is attached to that?

A. It was a little longer than this. The handle is about the same size, but the iron part was longer.

Q. Did you have any difficulty in using that dredge? 4

A. Yes, the same way almost as the small dredge. You cramped your hand, only with the long handled dredge on tubs my hand was full of blisters and corns, and every day I had a blister around the thumb here where the beater would come, from beating.

Q. You had to beat so hard?

A. Yes, that it formed blisters on my hand.

Q. On your right hand, in which you held the beater?

A. Yes.

work, or the same amount of work, and be less tired, is that correct? A. Yes.

Q. With which kind of a dredge can you make the best enameled ware? A. With the air dredger.

Q. Tell me why, won't you?

A. Because the powder comes out smoother, as I stated, than with the hand dredge, and you can cover the tub better, and the tub stays hotter, and you can go over it quicker, and the tub stays hot longer. You can go over it quicker, and the powder sticks to the iron better, and after it is melted it is all smooth, where with the hand dredge you find lumps that won't melt, and if you go down to melt those lumps it would form a roll, and if you left this one part smooth where there wasn't so much powder, and the other would have lumps in it, that wouldn't be no good tub; it wouldn't pass for a good tub.

Q. With the hand dredge, if I understood you, you said that the powder backed down in the dredge?

A. Yes, the powder it beats right down in the bottom, and that is what plays you out. You have to stop sometimes to get someone to loosen it before you can start to work again.

Q. Whereas with the air dredger it keeps coming out evenly all the time?

A. Yes, the powder is always loose; the hammering on there keeps it loose all the time, and you don't have to bother with it at all.

Q. How long did it take you to learn to use the old hand dredge, if you remember?

A. The first time I went on I was on for a week, and I couldn't do nothing, and I gave it up and went to forking, putting the rim on; I do not know how long I was forking, about a year I guess, and I went back enameling again, and it took me a couple of weeks to get into it.

Q. You had been putting on rims during that year that you were forking? A. Yes.

Q. What kind of dredge did you use to put on rims?

A. Short handle dredge.

Q. And after that you got the long handle dredge and enameled the insides of tubs, is that what you mean?

A. Yes.

Q. How long did it take you to learn to use the Arrott dredger? A. Two or three days.

Q. Would you go back to use the hand dredge now right along? A. No, sir, I do not think I would. 1

Q. Why not?

A. Because I think it would play me out now, especially in the summer time. I know I could not stand it then.

Q. Yet you did use the old hand dredge for a number of years before you learned to use the air dredge? A. Yes.

Q. Can you make as good an enameled article with the hand dredge as you can with the air dredger? A. No, sir.

Q. Why not? A. Why not?

Q. Yes?

A. Well, as I stated, the tubs are smoother with the air dredger, and I can tell by my pay-roll, too, when Saturday night comes around. 2

Q. By which method do you get the more pay?

A. By the air dredger.

Q. Why do you get more pay by the air dredge?

A. Because the tubs turn out better with the air dredger, it makes a smoother ware, a finer looking ware. They turn them out with the air dredger now that you hardly ever see a flaw in them, you never do see a flaw in them, while with the hand dredge, there is always a lump here and a lump there. 3

Q. How many first quality tubs, or "A" class tubs can you turn out with the hand dredge in a turn of eight hours, "A" class, mind you?

A. I do not believe you can turn any of them out good.

Q. In the old days when you were using the hand dredge, what is your recollection of the number of "A" tubs that you would make in a turn? A. Eight hours?

Q. Yes. A. Make about ten or eleven.

Q. Would they all be "A's" or would some of them be "B's"? A. A great deal of them would be "B" tubs.

Q. So the average of your work, when you were working that way would be about ten tubs a turn? 4

A. About that, ten or eleven and sometimes twelve.

Q. And out of that ten or eleven, how many would you get as an average class "A," and how many would you get as an average class "B"?

A. I guess I would get about out of that ten, four "A."

Q. And about six "B's"?

A. Yes, I guess I would get out of that ten about six "B."

1 Q. Take a turn of eight hours in using the pneumatic dredger, the Arrott dredger, how many tubs would you turn out as an average?

A. Thirteen, fourteen, and fifteen; I have turned out fifteen already, and out of that fifteen—

Q. Out of that fifteen, out of that number that you turned out, how many would there be A tubs?

A. If I turned out fourteen tubs, there would be about ten or twelve "A" tubs.

Q. And only two to four "B" tubs? A. Yes.

Q. Do you know whether the sieve in the Arrott dredger
2 which you used has a finer or coarser mesh than it had with the old hand dredge?

A. It has a finer mesh in the Arrott dredger.

Q. Have you worked during the last two or three weeks any on the night turn?

A. I worked part night turn, yes, sir, last week; I worked part day and part night.

Q. Did you make any tubs by hand during any of the times that you worked recently? A. Yes.

Q. Well, now, what was your experience as to the quality of tubs you turned out by the hand method as compared
3 with the quality of tubs you turned out with the air method?

A. Well, with the air dredger, I got nearly all "A's," and with the hand dredge it was nearly all "B's."

Q. Did you make just as much effort to make good tubs in each instance?

A. Yes, I took more pains with the hand dredge than I did with the air dredger to try to get it smooth.

Q. Yet, the result was, as I understand you, that practically all of your work was "B's?"

A. Yes, always had these little rolls and lumps in it from the hand dredge.

4 Q. Did you use the same powder, the same enameling powder, in this period you are just speaking of that you used the hand dredge as you did when you were using the air dredger on day turn? A. The same powder, yes.

Q. During the time you are speaking of sometimes you worked on day turn and sometimes on night turn? A. Yes.

Q. And you used the same powder but different kind of dredges?

A. Yes, the same powder but different dredges.

Q. With which dredge could you go over the article which you were enameling quicker? A. The air dredger. 1

Q. Is that any advantage?

A. The faster you get over it the better the powder will stick.

Q. Why is that, if you know?

A. With the hand dredge it takes you so long to go over it and you get tired once in a while, and by the time you got around to finish it up the iron is cold and the powder won't stick to it, while with the air dredger you get along quicker and the tub is still hot when you get through with it.

Q. Upon the question of making a good enameled article, what advantage is there in having the tub hot when you get through? 2

A. Because the powder sticks on there better and melts down quicker and smoother, where with the hand dredge it takes longer to melt down, and as I said before, you can't melt it smooth, the sides and corners would be rough, the ends would be rough and the sides smooth, because you would get more powder on the end than you would on the side—you can't get enough on the side, and while you are trying to melt down the ends the powder on the sides melts down too fast, as there is not enough on there to correspond with the end, and it forms rolls in the bottom of the tub, and sometimes on the sides of the tub. 3

Q. Is there any difference in the care you have to exercise in handling the tub while you are putting it into the furnace, whether you are using a hand dredge or using an air dredger?

A. You must take more care with the hand dredge.

Q. Why?

A. To keep the powder from falling off. The tub is cooler and it takes you longer to put it on with the hand dredge and the least little jar will make it fall off, but with the air dredger the powder sticks right to the iron while the iron is hot and it won't fall off, if you happen to butt it or anything like that. 4

Q. Did you ever do any chipping of enamel off of iron ware? A. No, sir, I have never done any of that.

Q. In the time recently that you were using the hand dredge at night, and then using the air dredger during the day time, did you use the same castings indiscriminately?

A. Yes, the same castings.

Q. That is when you were working both day and night?

A. Yes.

Q. Came to you in the same condition?

A. In the same way, yes, sir.

Q. Now, all the conditions being the same, the heat of your furnace and so on being the same, can you make a better bath tub with the air dredger or can you make a better bath tub with the hand dredge?

A. I can make a better bath tub with the air dredger.

Q. Can you make as good a bath tub with the hand dredge under any circumstances as you can with the air dredger? A. No, sir, you cannot.

Q. With which dredge do you keep the furnace busiest?

A. With the air dredger.

Q. Have you ever, when using the air dredger, been able to keep more than one furnace going?

A. I do not think we have tried it with the air dredger—you could, yes, sir, you could—

Mr. Noble: Mr. Stenographer, I do not think the witness understood my question, and I will ask that you repeat it.

(Question repeated.)

Mr. Noble: I suppose my question isn't clear, what I mean is this: can a man who is operating the air dredge utilize the heat of more than one furnace—in other words, can he put a tub in one furnace and let that get heated up, and in the meanwhile take a tub out of another furnace and enamel it, and then go back and take the tub out of the first furnace and enamel it with the air dredger?

Mr. Grosvenor: I object to the question, as the witness stated that he has never tried that method.

The Witness: I never tried it with the air dredger, and I do not think you could do it with the air dredger, because it melts down quicker and smoother. I do not think you could run both furnaces with the air dredger.

Q. You mean you wouldn't have time?

A. No, sir, you would not, but with the hand dredge you could do it. I have done it often with the hand dredge, put one tub in and heat it and work on the other, and by the time that is done I would work on the other one.

Q. In other words, you can get your tub in and out of the furnace much quicker with the air dredger? A. Yes. 1

Q. It takes longer to heat it with the hand dredge?

A. Yes, and longer to melt it down.

Q. As a skilled enameler, do you find that the proportion of pieces that you turn out with the air dredger of class "A" is greater than the proportion of tubs that you turned out of class "A" when you used the hand dredge?

A. It is greater with the air dredger.

Q. Is the wear better? A. It looks better.

Q. Is it better?

A. I should think so, it looks better and I think it lasts better. 2

Q. Is there any advantage in getting the enamel on even?

A. Yes, that is what makes it melt down smooth, getting the powder on even.

Q. Is there any advantage in getting it on thin as soon as you have the tub white?

A. Yes, the thinner you put it on the quicker it sticks to the iron.

Q. It fuses better, is that what you mean? A. Yes.

Q. Did you ever ask the foreman to take you off enameling and put you to firing when you were using the hand dredge? A. Yes, I asked him a couple of times. 3

Q. Why did you ask him that?

A. Because I would get played out, and I could not get the work out right with the hand dredge.

Q. Couldn't make good tubs?

A. No, sir, not with the hand dredge after I used that air dredger.

Q. But you could make them all right with the air dredger?

A. Yes, and I asked him a couple of times to take me off and put me to firing again. 4

Q. When you used the hand dredge? A. Yes.

CROSS EXAMINATION BY MR. GROSVENOR:

Q. You were working at night last week?

A. Sometimes, part night and part day.

Q. When did you work?

A. I worked from 4 in the afternoon until 10 at night.

Q. Six hours? A. Yes.

Q. Seven days? A. Last week.

Q. Every day last week? A. Yes.

Q. How about the week before?

A. I worked from 10 o'clock in the morning until 4 in the afternoon.

Q. And last week you used the hand dredge entirely?

A. No, sir, I used the air dredger until around 6 o'clock, half-past 5 or 6 o'clock, and from that time on I used the hand dredge.

Q. From 6 o'clock until 10 o'clock? A. Yes.

Q. Four hours? A. Yes.

Q. Let me look at your hand, have you got any blisters there (indicating the witness's hands)? A. Not now.

Q. Have you got any corns there?

A. No, sir, there are no corns there now, but you ought to have seen them when I had the hand dredge.

Q. You used the hand dredge last week?

A. But that wasn't many hours.

Q. Five hours a day? A. It was only four hours.

Q. That is half of a turn?

A. It is about half of a turn, yes, sir.

Q. Your hand is in good shape anyway, isn't it, now?

A. Yes, as long as I don't use the hand dredge.

Q. It is in good shape in spite of your using the hand dredge last week? A. For them few hours, yes, sir.

Q. How many enamelers were working at night at the same time you were last week?

A. Just working one furnace.

Q. You were the only enameler? A. Yes, at that hour.

Q. You are the head man and then you have a rim man and a wheel man, is that right? A. Yes.

Q. The week before you worked entirely with the air dredger? A. Yes.

Q. Do you remember what you made a day last week?

A. No, sir, I could not tell you that as I haven't got my book with me.

Q. You cannot remember that? A. No, sir.

Q. Do you remember what you got a day the week before?

A. Day work?

Q. Yes? A. Working by the day?

Q. You are paid, I suppose, by the piece? A. Yes.

Q. Last week you were working part day and part night, part with the hand and part with the air, do you remember what you got on any of those days?

A. Oh, yes, one day I got four "A's" and six "B's," I made ten tubs, and another day I got three "A's" and seven "B's"; it ran just like that. 1

Q. What is the difference between what you get on an "A" and what you get on a "B," 7 cents?

A. Seven cents on the five foot tub, and 9 cents on the 5½.

Q. The week before you used the air dredger entirely?

A. Yes.

Q. Do you remember what "A's" and "B's" you got then?

A. Ten "A's" out of eleven tubs or nine "A's" out of eleven tubs. 2

Q. The standard of inspection is the same both for last week and the week before that? A. What do you mean?

Q. I mean what was an "A" tub last week was an "A" tub the week before? A. Yes, the same thing.

Q. So if a tub was good enough to be an "A" last week it was good enough to be an "A" the week before that?

A. Yes.

Q. Then some of the tubs you made under the hand method were just as good as some of the tubs you made under the air method? A. No, sir.

Q. They were class A? 3

A. If they have just a small roll or lump in them, the inspector might take pity on you and give you an "A"?

Q. And you mean to say that you never really got an "A" with the hand dredge?

A. No, sir; you would not. The inspector don't want to give you all "B's" and he allows you "A's" sometimes.

Q. Do you know anything about these experiments which the last witness testified to? A. No, sir.

Q. Did he ever tell you why he made you use the hand dredge instead of the air dredger last week?

A. No, sir, he did not. 4

Q. This long-handle dredge, when you are using it, you can stand just as far away as with the automatic dredger, can't you?

A. With the long-handle dredge—yes, sir.

Q. When this air dredger is turned off you can at once start working with the long-handle dredge, can you?

A. Yes, sir.

Q. You can then make enameled ware with the hand dredge? A. If the air is turned off, yes.

1 Q. Have you ever been in any other factories?

A. When McShane's was running I would stand outside and look into the window, that is all.

Q. Did you ever know anything about the making of enameled powder? A. No, sir.

Q. Is that higher-paid work than the enameling?

A. I couldn't tell you that; before I worked on the furnace I was in the mixing room helping sieve the chemicals that they have there, but I don't know anything about the mixing.

Q. You did not determine the proportions? A. No, sir.

2 Q. Who did do that?

A. When I first went there Mr. Weiskittel did that.

Q. Senior?

A. The old man is dead, Mr. Anton Weiskittel.

Q. When did Senior die? A. He has been dead long ago.

Q. Aren't there two Weiskittels there today?

A. The senior Weiskittel has been dead long ago and this is Anton Weiskittel, Junior.

Q. Who is the president today?

A. Anton Weiskittel, Junior.

Q. Who is the other Weiskittel in the business today?

3 A. Harry Weiskittel.

Q. What is he, is he the nephew?

A. No, he is a brother.

Q. How many furnaces have you working now in the daytime? A. One tub and one small ware.

Q. How many do you have at night?

A. The same thing; the same two furnaces run day and night.

Q. Is there an enameler attending to the small ware at night? A. Yes, sir.

Q. While you attend to the tubs?

4 A. Yes, sir; there are two furnaces, one for the small ware and one for the tubs.

Q. Then there is no change now as between day and night in the number of furnaces that you operate? A. No, sir.

Q. But in the day time the air dredger is used and at night the hand dredge is used, is that right? A. Yes, sir.

Q. When did you begin to use this air dredger?

A. Last summer; some time last summer; I cannot tell you the exact date.

Q. Do you know anything about the making of cast iron? 1
A. No, sir.

RE-DIRECT EXAMINATION BY Mr. NOBLE:

Q. Have you complained to the foreman about the use of the hand dredge during these recent times that you have been using it?

Mr. GROSVENOR: Objected to as immaterial.

A. I have complained about the hand dredge; yes, sir. I wanted the air dredger.

Q. Did you complain about using the hand dredge? 2
A. Yes, sir.

Q. Why?

A. Because it tired me out and I could not make no good tubs with it, not as good as I could with the air dredger.

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. What did he say when you complained to him?

A. He did not say anything; he said, Oh, we will have the air again; that was all.

Q. Did he tell you that it was more economical to use the hand at night? A. No, sir; that is all he told me. 3

Q. How many furnaces are there at Weiskittel's?

A. There are just them two running, but when they are busy they have two tub furnaces running.

BY Mr. NOBLE:

Q. How many small ware furnaces?

A. The same amount; and when they are busy they have two running.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties. 4

JOSEPH B. LE BRUN, a witness of competent age, produced on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Please give your full name.

A. Joseph B. Le Brun; 3318 Canton avenue.

Q. Where are you employed?

A. A. Weiskittel, Son & Company.

Q. What is your work there? A. Enameler.

Q. How long have you been with the Weiskittel Company? A. Four years.

Q. What kind of ware do you enamel?

A. Bathtubs.

Q. Have you ever enameled small ware? A. No, sir.

Q. About how long have you been enameling bathtubs?

A. About eight months.

Q. About eight months? A. Yes, sir.

Q. Did you ever use the hand dredge? A. Yes, sir.

Q. Was the dredge which you used similar to Exhibit No. 279? A. Yes, sir.

Q. Did you ever use the short-handle hand dredge like Exhibit No. 278?

THE WITNESS: This one (indicating)?

Mr. NOBLE: Yes.

A. No, sir.

Q. Which dredge do you find is the easier on you, the long-handle hand dredge or the pneumatic dredger?

A. The air dredger.

Q. Why?

A. Because I make better work and it don't exert me as hard; that thing there, when I use that it plays me out so here (indicating) that I cannot hardly use it; it plays me out here (indicating wrist).

Q. Does the use of the Arrott or air dredger tire you as much as the old hand dredge? A. No, sir.

Q. With which dredge can you make the better ware?

A. The air dredger.

Q. Why?

A. Because I can put the enamel on the tub smoother; it melts down nicer; I do not have to put as much on and

it is quicker work and the powder is finer when it comes through the air dredger than through the hand dredge. 1

Q. Is the mesh on the air dredger finer than it is on the hand dredge? A. Yes, sir.

Q. When you were using the hand dredge how many hours were there in a turn? A. Eight hours.

Q. How many tubs could you turn out in a turn of eight hours with a hand dredge? A. Ten or eleven.

Q. In turning to the Arrott dredger or air dredger, how many tubs could you turn out in a turn of eight hours with that dredger?

A. Thirteen or fourteen, and sometimes fifteen. 2

Q. With which dredger would you get the greater number of class A tubs? A. With the air dredger.

Q. What would you say was about the average of the tubs you turn out with the hand dredge in a turn of eight hours?

THE WITNESS: A's and B's.

Mr. NOBLE: No, the total number.

THE WITNESS: How many?

Mr. NOBLE: Yes, the average number you would turn out.

THE WITNESS: Do you mean how many tubs I could turn out in eight hours? 3

Mr. NOBLE: Yes.

A. Ten or eleven.

Q. That was an average? A. Yes, sir.

Q. Out of that ten or eleven tubs, please state what was the average number of A's that you got and what was the average number of B's?

A. Sometimes I got all B's and no A's, and sometimes I got a couple of N. G's.

Q. They were no good entirely? 4

A. Yes, sir; and had to be chipped off.

Q. Now, taking the Arrott dredger, of the 14 or 15 tubs which you usually turned out with that, how many A's would you get?

A. Eleven, twelve and thirteen—it has not been over a week that I made 50 tubs and got 45 A's.

Q. With the air dredger? A. Yes, sir.

Q. Did you ever do as well with the hand dredge?

A. No, sir; couldn't expect to.

Q. Could you ever make as good a tub with the hand dredge as you can with the air dredger? A. No, sir.

Q. When using the hand dredge how does the powder come out of the sieve?

THE WITNESS: How does the powder come out of the sieve?

Mr. NOBLE: Yes.

A. Well, it comes out coarse; as you beat it, it comes just as you beat it.

Q. It comes out in puffs?

A. Yes, sir; just as the smoke comes out of a smoke-stack in the engine; and it comes finer with the air dredger; but with the hand dredge it comes out coarser and you can see it laying there; with the air dredger it melts down smoother than with the hand dredge.

Q. With the hand dredge did you ever have any difficulty in getting the powder on the tub just where you wanted it?

A. Yes, sir; sometimes the tub would lay like that (indicating), and you would go over it that way and there would be a streak up here (indicating) where you would not get any powder, and if I come along here to put it on there, there would be a streak along here (indicating); but with the air dredger you can come around and get it on as nice as you please.

Q. That is with the air dredger?

A. Yes, sir; with the hand dredge you leave a lump; I could not beat it hard enough to get it on there without a lump.

Q. But with the air dredger can you do that?

A. Yes, sir; it is very seldom that you get a lump in it.

Q. During the last few weeks have you worked any on night turns? A. Yes, sir.

Q. And have you used the hand dredge on any of those night turns that you worked? A. Yes, sir.

Q. You were enameling bathtubs at that time?

A. Yes, sir.

Q. During the same time that you used the hand dredge upon the night turns did you also work day turns and use the air dredger? A. Yes, sir.

Q. Did you use the same enameling powder at those times? A. I did, to the best of my knowledge.

Q. And did you use the same castings indiscriminately?

A. Yes, sir. 1

Q. What kind of ware were you able to turn out with the hand dredge during these recent weeks?

THE WITNESS: What kind of ware?

Mr. NOBLE: Yes.

A. It wasn't much of anything.

Q. What was the matter with it?

A. It was full of rolls and lumps and wavy, and you could not get it to melt down smooth.

Q. During the day time, while working with the air dredger, did you have the same difficulty?

A. No, sir; not with the air dredger. 2

Q. The man who inspects the ware, whether you make it at night or in the day turns, is the same man, is he not?

A. Yes, sir; the same man.

Q. Does he know, except from the appearance of the tub, whether it is made with the air or the hand dredge?

A. I suppose he does; yes, sir.

Q. How do you mean?

A. I expect he knows it; he knows who is working with the hand dredge and who ain't.

Q. With which dredge can you make the most money?

A. With the air dredger. 3

Q. With which dredge does your employer lose the more tubs? A. The hand dredge.

Q. Your employer, then, when you are using the air dredger, as I understand you, gets better ware as a result of your work?

A. Yes, sir; he gets better ware and I get more money.

Mr. NOBLE: That is all.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. You say you have been working about eight months out there? A. Yes, sir. 4

Q. All the time as an enameler?

A. Enameling about eight months; yes, sir.

Q. Did you start in as enameler as soon as you went to the factory? A. No, sir.

Q. But you have been an enameler for eight months?

A. Yes, sir.

Q. You enameled some months, then, by the hand method? A. Yes, sir.

1 Q. How long did you enamel by the hand method, do you recall? A. Not long.

Q. Now, are you on the day turn or night turn now?

A. I am on the day turn now; I go to work at ten o'clock in the morning.

Q. Last week were you on the day turn?

A. I was on from four in the morning until ten in the morning.

Q. Then you were on a different shift from Mr. Goldsmith? A. Yes, sir.

Q. Though you were on a different shift from him, still
2 on part of your turn you also used the hand dredge, is that right? A. Yes, sir.

Q. And you were making bathtubs? A. Yes, sir.

Q. By the hand dredge? A. Yes, sir.

Q. How long have you been using the hand dredge this way? A. Since 1911.

Q. Since the beginning of the year?

A. Yes, sir; there are four gangs on the one furnace; that is, in this new year.

Q. Before that they had two furnaces running?

A. They had two furnaces; yes, sir.

3 Q. You say the same inspector inspects the tubs made both by hand and by air, is that right? A. Yes, sir.

Q. Part of your shift you are working by hand and part by air last week?

A. Yes, sir; this week I have all air, from ten in the morning until four in the evening.

Q. Suppose you go into your store room or warehouse or factory now, could you pick out the tubs that were made by hand and those by the air dredger?

A. I don't know that I could pick out all, but some of them.

4 Q. Those that were the handsomest you would say were made by air? A. Yes, sir.

Q. And those that were made the least handsome you would say were made by the hand dredge? A. Yes, sir.

Q. And that is the only way you could tell?

A. I could pick some out but not all; sometimes you get a very good one made by the hand dredge.

Q. Has there been any change in your factory in the enamelers since the first of the year?

THE WITNESS: In the enameling room?
Mr. GROSVENOR: Yes.

A. No, sir.
Q. You are the first enameler? A. Yes, sir.
Q. Who is your rim man? A. Anton Arnold.
Q. He uses the hand dredge, I suppose? A. Yes, sir.
Q. Who was the wheel man? A. William Williams.
Q. And last week you worked from 4 to 10? A. Yes, sir.
Q. Who went on at ten o'clock in the morning?
A. A man named Charlie Norbrook.
Q. He was an enameler? A. Yes, sir.
Q. And who else?
A. George Keller; that is his forker; that is the rim man or second man.
Q. Who was the wheel man?
A. The man that I had was his wheel man part of the time.
Q. And they worked—

Mr. FISHER: From 4 to 12—eight hours.
THE WITNESS: Yes, sir; there are only three hours; the fireman makes eight hours.

BY Mr. GROSVENOR:

Q. Mr. Arnold worked in the afternoon?
A. Yes, sir; he worked with me.
Q. Who else?
A. Mr. Norbrook who comes on when I go off.
Q. And he works from 10 to 4?

THE WITNESS: This week, you mean?
Mr. GROSVENOR: No, last week.

A. Yes, sir.
Q. Who is the next enameler?
A. Goldsmith is after Norbrook.
Q. Then the four enamelers were yourself, Norbrook and—
A. And Sullivan.
Q. Are those the only members out there?
A. There are more out there, but there are only four gangs working on the furnace.
Q. Have you ever worked at any other factory?
A. No, sir.

1 Q. Did Mr. Fisher say anything to you about experiments?

THE WITNESS: About experiments?
Mr. GROSVENOR: Yes.

A. No, sir.

Q. What did you understand was the reason why you were not allowed to use the Arrott dredger, that is the air dredger, about the beginning of the year?

A. That I couldn't tell you; I don't know anything about that.

2 Q. No reason was given?

A. No, sir; I done my work as I was told, and that is all I knew.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

WILLIAM BODINE, a witness of competent age, produced on behalf of the Defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

3

Q. Give your full name and address?

A. William Bodine, 607 Fifteenth Street.

Q. What is your business? A. Enameler.

Q. Where are you employed? A. A. Weiskittel & Son Co.

Q. How many years have you been there as an enameler?

A. Altogether, nine years.

Q. During that time what kind of ware have you enameled? A. Bathtubs.

Q. Have you enameled any other kind of ware?

A. I have enameled small ware, very few of it, though.

4 Q. Your enameling work is chiefly upon bathtubs?

A. Yes, sir.

Q. Is that right? A. That is correct.

Q. Did you ever use the short-handle hand dredge similar to Exhibit No. 278? A. Yes, sir; on small ware.

Q. On small ware? A. Yes, sir.

Q. Did you ever use the long-handle hand dredge similar to Petitioner's Exhibit No. 279? A. Yes, sir; on bathtubs.

Q. And have you used the Arrott or air dredger?

A. Yes, sir; I have on tubs.

Q. About how long ago did you commence using the air dredger on bathtubs? A. Along about in June. 1

Q. What year? A. 1910.

Q. Will you just tell me, take that Exhibit No. 278, will you please—that is the short-handle hand dredge; you say you used a dredge similar to that on small ware? A. Yes, sir.

Q. For how long did you use a dredge like that?

A. I did not use it long, only about a week or so, only a few days.

Q. How did you hold it? A. Like this (indicating).

Q. Held it in your left hand with the end of the handle under your elbow? A. Yes, sir. 2

Q. And what did you hold in your right hand?

A. A beater.

Q. With the right hand you beat the handle?

A. Yes, sir.

Q. For the purpose of making the powder go through the sieve? A. Yes, sir.

Q. Did you have any difficulty beating that beater?

A. Yes, sir; with my left arm and wrist and shoulder.

Q. What was the matter with them?

A. They were strained.

Q. And how about your hand? 3

A. It got played out and I could not use it.

Q. Could you make as good ware with that as with the Arrott or air dredger? A. No, sir; I could not.

Q. Could you make as much ware?

A. No, sir; I could not.

Q. Take Petitioner's Exhibit No. 279, which is the long-handle hand dredge; how did you guide that dredge?

A. That was supported there by a chain, a swinging chain.

Q. And you held the end of it how?

A. Just about here (indicating). 4

Q. That is to say under your left arm up against your body? A. Yes, sir.

Q. How did you guide it?

A. Partly with the arm and partly with the body.

Q. You guided it over the article which you were enameling with your left hand and your body? A. Yes, sir.

Q. How did you get the powder out of it?

A. With this beater.

Q. Beating it with the right hand?

1 A. Yes, sir; with the right hand.

Q. Did you have any difficulty operating that dredge?

A. Yes, sir; I did.

Q. What were the difficulties?

A. My wrist was strained and there was a strain on the shoulder.

Q. Which wrist are you talking about?

A. The right one.

Q. That is the hand in which you held the beater?

A. Yes, sir.

Q. Could you always put the enamel on the article just
2 where you wanted it when you used the hand dredge?

A. No, sir; could not.

Q. Could you make as good enamel ware with that as you could with the Arrott dredger? A. No, sir.

Q. Please take Petitioner's Exhibit No. 280, which is the Arrott dredger and tell me how that is operated?

A. This way (indicating).

Q. In other words you held it with your left hand back on the end of the handle where the valve is and your right hand extended forward? A. Yes, sir.

Q. Did you have any greater freedom in the use of that
3 dredger than you did with the old long-handle or short-handle hand dredge?

A. Yes, sir; with this dredger here.

Q. Exhibit No 280? A. Yes, sir.

Q. Tell us how it was that you could use that more freely?

A. Well, it was more easy on you and it comes more handy to you and it beats the powder out here and you do finer and smoother work.

Q. Does it give you any advantage in having both hands free? A. Yes, sir; sure it does.

Q. Which dredger has the finer mesh? I say do you
4 know which dredge has the finer mesh, the hand dredge or the Arrott dredger? A. The air dredger.

Q. The air dredger has the finer mesh? A. Yes, sir.

Q. Did you have any difficulty getting the enameling powder out of the hand dredge? A. Yes, sir.

Q. Tell me what those difficulties were?

A. It was packed down in there and you could not drive it through.

Q. That is it packed down in the dredge and you could

not hit it hard enough with your right hand to get it through, 1
is that right? A. That is right.

Q. Would you get it on the article that you were enameling smoothly? A. Not with the hand dredge, no, sir.

Q. How would it fall on the article you were enameling?

A. It would be all wavy, lumpy, and when you melt a tub down it was all in rolls on the side of it, or curtains.

Q. What do you mean by a curtain?

A. Where the powder laps over and runs down, that is, thicker one place than another.

Q. Is it any advantage to get the powder on the article you are enameling of an equal thickness all the way over? 2

A. Yes, sir.

Q. What advantage is it?

A. It fuses better and makes a better piece of ware and it melts down quicker.

Q. Suppose an enameled article which had the enamel on it thick and thin in places, was struck a blow, what would be the effect of that?

A. Well, the thick part would be liable to spring off.

Q. Did you ever do any chipping of enamel?

A. Yes, sir; I am a chipper now.

Q. Which do you find easier to get off, that which is put 3
on thick or thin? A. That which is put on thick.

Q. Which do you find easier to get off, that put on with the hand dredge or the air dredger?

A. That put on with the hand dredge.

Q. How long did it take you to learn to use the air dredger? A. Oh, only a day or two.

Q. Did you experience any of those difficulties, such as your arm being tired out or your wrist being tired out after you began using the air dredger? A. No, sir.

Q. Which dredge is the easier for a man to use?

A. The air dredger. 4

Q. With which one can you turn out the most ware?

A. With the air dredger.

Q. When you were working on the hand dredge how many hours were there to a turn? A. Eight hours.

Q. How many tubs did you make with the hand dredge in a turn of eight hours? A. Ten or eleven.

Q. Averaged about ten or eleven? A. Yes, sir.

Q. After you began to use the air dredger, after that was

1 introduced in the Weiskittel works, how many tubs could you turn out on a turn of eight hours?

A. Between fourteen and sixteen, tubs, with the air dredger.

Q. Now, with the ten or eleven that you could make in a turn of eight hours with the hand dredge, how many would there be A tubs and how many B tubs, as an average?

A. Well, the most of them were B's.

Q. How about that with the air dredger?

A. With the air dredger it was different altogether; you would get most of them A's. I have made all A's already
2 with the whole day's run.

Q. Did you ever do that with the hand dredge?

A. No, sir.

Q. Do you believe that you could make as good a tub with the hand dredge as you can with the air dredger?

A. No, sir.

Q. Which one do you make the most money out of?

A. The air dredger.

Q. With which one can you get over the article that you are enameling more quickly? A. With the air dredger.

Q. Is that any advantage, to be able to get over the ar-
3 ticle quickly?

A. It fuses to the iron quicker and you can put the tub back while it is hot yet and it won't get cool and you have to heat it up again.

Q. That is to say, when you use the air dredger you can get over your tub more quickly, and your enameling powder fuses to the iron more quickly with the air dredger; is that correct? A. Yes, sir; it is correct.

Mr. GROSVENOR: That is very leading.

Mr. NOBLE: I know it is. Do you offer that as an objection.

4

Q. With the air dredger is your tub hotter or colder at the end of putting on your coat than it is when using the hand dredge? A. Yes, sir; it is hotter.

Q. And that enables you to get it back in the furnace quicker, doesn't it and you do not lose the heat?

A. No, sir.

Q. Is there any advantage in getting it back in the furnace quicker? A. Yes, sir.

Q. What is it?

A. It melts down smooth and you make more time by it. 1

Q. That is, you use the furnace more? A. Yes, sir.

Q. And you make more tubs? A. Yes, sir.

Q. And you make better tubs? A. Yes, sir.

Q. What do you attribute that to, your ability to work faster and so on? A. Why, you make more money by it—

Q. Well, what do you attribute it to?

THE WITNESS: I don't understand that.

Q. How does that come about, that you can do that now better than you could when you used the hand dredges?

THE WITNESS: That is the putting of the tub in 2 quicker?

Q. How are you able to get over the tub quicker and get it back in the furnace quicker and so on?

A. You take the air dredger and the powder comes out in a smoother flow and you get over the tub quicker with the air dredger and you get it back quicker.

Q. So you attribute this improvement that you have spoken of to the air dredger? A. Yes, sir.

Q. Are you as tired at the ending of a turn, when using the air dredger, as you used to be when you used the hand dredge? A. No, sir. 3

Q. What is the difference?

A. My arms are not played out then.

Q. Did you have to lay off when you used the hand dredge? A. Yes, sir.

Q. How about since you use the air dredger?

A. That is all right; I never do get tired with that.

Q. Would you be physically able to do the work right straight along if you went back to the use of the hand dredge?

Mr. GROSVENOR: I object to that question. The 4 witness testified that he was nine years using this hand dredge.

Q. Suppose for example, Mr. Bodine, Mr. Weiskittel were to abandon the use of the air dredger, how would you feel about going on working there and using the hand dredge?

A. I would ask for another job.

Q. Have you during the last few weeks worked any on night turns? A. No, sir; I have not.

1 CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Have you used the hand dredge since January, 1911, on any of your ware?

A. No, sir; I have not; I have been off ever since Christmas and working around odd times.

Q. I couldn't hear you, what was that?

A. I have been off ever since Christmas.

Q. You have not been enameling since Christmas?

A. No, sir.

Q. Have you not been at work?

A. Yes, sir; chipping off some work done there.

2 Q. Did you know the hand dredges were used at night since early this year?

A. Only what I heard.

Q. What did you hear?

A. I am not there at nighttime, only in the daytime.

Q. Did you hear in the daytime that they were being used at night? A. Yes, sir.

Q. You have testified to a great many advantages that this air dredger has over the hand dredge; have you not?

A. Yes, sir.

Q. In view of those advantages, don't you think it strange

3 that the Company should ask the men to use the hand dredge at night?

Mr. NOBLE: I object to the question. The witness is not within the confidence of the Company. It is not proper cross examination, and it is irrelevant and immaterial.

A. I don't know anything about it.

Q. It is something you don't know anything about?

A. No, sir.

Q. What do you mean by chipping enamel, breaking up

4 defective tubs?

A. Yes, sir; chipping the enamel off.

Q. So they can be sent back to the cupola? A. Yes, sir.

Q. So they can be used again?

A. Yes, sir; so they can be re-enameled.

Q. You make different grades of tubs, don't you?

A. Yes, sir.

Q. Some five year tubs? A. Yes, sir.

Q. Those are considered your best tubs, aren't they?

A. I couldn't say that. 1

Q. You put more enamel on your best tubs than you put on your cheap tubs?

A. We endeavor to make them all good.

Q. But in the trade some tubs sell for more than others, and some are larger and heavier and more substantial?

A. Yes, sir.

Q. Aren't those heavier tubs more thickly coated with enamel than with the cheaper and lighter tubs? A. No, sir.

Q. It is not so? A. No, sir.

Q. Were you in the factory when they made the dredges last summer? A. Yes, sir. 2

Q. Who made them, do you remember?

A. I believe Mr. Fisher.

Q. He made them? A. Yes, sir; I believe he did.

Q. Do you know anything about the making of the powder? A. No, sir.

Q. Or the mixing of the cast iron? A. No, sir.

Q. Or the foundry work? A. No, sir; I do not.

Q. Your duties have been confined to that of using the dredger, is that it? A. That is all.

Q. And as they are not now necessary there, you are simply chipping off the enamel? A. Yes, sir. 3

Q. You enameled the tubs with the hand dredge for nine years, did you not? A. Yes, sir; practically nine years.

Q. And in all that time your long handle dredge was supported by a chain, was it? A. Yes, sir; supported by a chain.

Q. You never tried to dredge bathtubs with this dredge (indicating Exhibit No. 278) which was not supported by a chain, did you? A. No, sir; only on the small ware.

Q. On the small ware you used the Arrott without the weight?

A. Yes, sir; but we have only been using those for a couple of years. 4

Q. Today you use the large Arrott dredger for your bathtubs and a small Arrott dredger for your small ware?

A. Yes, sir.

Q. The only difference in doing the small ware today, that is as far as the weight is concerned, is that with the Arrott dredger you use two hands for the weight and with the little hand dredger you held it up with one hand?

A. Yes, sir.

Q. That is right, isn't it? A. Yes, sir.

1 RE-DIRECT EXAMINATION BY Mr. NOBLE:

Q. This ware you are chipping is defective ware, is it not? A. Yes, sir.

Q. What do you chip the enamel off for?

A. So that it can be enameled over again.

BY Mr. GROSVENOR:

Q. And this ware you are breaking up is ware made from day to day?

A. No, sir; it is ware standing over in the warehouse for the last eight or nine or ten years; it has been standing in
2 the warehouse and was made with the hand dredge.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Mr. NOBLE: Counsel for Defendants announces that he must be in New York tomorrow for the trial of a case, but he hopes to be able to go on again on Friday, and if counsel for the Government will permit him he will notify him on Thursday of the prog-
3 ress of the case.

Mr. GROSVENOR: Counsel for the Government will be quite ready to go on Friday, if it is agreeable to counsel for the Defendants, if he is advised by Thursday night.

Counsel for the Government wishes that the witness Fisher be called for further cross examination in respect to the comparative wages paid during the month of January and February, 1911, to the workmen working with the hand dredge and the Arrott dredger. During the cross examination this morn-
4 ing, counsel for the Government asked that the witness produce certain reports that he testified were made under his direction and that of his Assistant Foreman, being daily reports and which were turned over to the Secretary of the Company. I asked him to produce them, and my understanding of the record is that it was stated by counsel for Defendants that, not being in his possession, he could not get them. Thereupon Mr. Heise, the Secretary, was subpœnaed to produce them and now has them in Court and the

witness Fisher, now being in Court, I ask counsel for leave to examine on cross examination, the witness Fisher. 1

Mr. NOBLE: Counsel for Defendants wishes to state that the cross examination of the witness Fisher was completed by counsel for the Government, and counsel for Defendants will state that the record will show that Mr. Fisher said that the reports to which he referred were daily reports. He has the means at hand for ascertaining those facts, and counsel for Defendants again states that he has no objection to putting Mr. Heise on at this time. 2

THE EXAMINER: It seems to me that the only question for the Examiner to decide, as the matter is presented, is as to whether Mr. Fisher shall be further cross examined. The record seems to show that the right to further cross examination was reserved. Aside from that—

Mr. NOBLE: Where was it reserved, at the end of the examination?

THE EXAMINER: No, during the course of the examination. Further, if counsel for the Government requests Mr. Fisher to take the stand for further cross examination and counsel for the Defendants objects, I should say that the Examiner would be going outside of his province if he attempted to overrule or sustain the objection. 3

Mr. GROSVENOR: In other words, he takes the stand and we go on and the court rules afterward?

THE EXAMINER: Yes, sir; that is how I understand it.

Mr. NOBLE: Counsel for Defendants desires to state again, as he has done repeatedly that the reports that Mr. Grosvenor has subpœnaed the production of are here in court in the possession of an officer of the Weiskittel Company. They are not in the possession of the witness, Mr. Fisher. Mr. Grosvenor has stated that he wants to cross examine Mr. Fisher in respect to those records. Now, counsel for the Defendants points out again that if the Government desires the records which they have subpœnaed the production of, they must have them produced in the regular way and take the consequences of their production as to 4

whatever rights the production of them may give the officers of the Weiskittel Company.

Mr. GROSVENOR: Will you take the stand, Mr. Fisher?

CHARLES A. FISHER, a witness heretofore produced and sworn on behalf of the Defendants, recalled for further cross examination, testified as follows:

CROSS EXAMINATION BY Mr. GROSVENOR (continued):

Q. On cross examination this morning I asked you about printed records of tubs and other enameled ware, produced at your factory during the last six weeks? A. Yes, sir.

Q. And during the period of experiment; do you recall that? A. Yes, sir.

Q. You said you had kept the daily reports—

Mr. NOBLE: Let the witness testify.

THE WITNESS: I did not say I kept the records.

Q. Wait a minute; let me finish my question. You make out the record? A. Yes, sir.

Q. And then you turn it over? A. Yes, sir.

Q. In using the term "keeping the record" I mean the same as if you said you kept a diary; you did make out a record during these days?

A. There was a record made out and I signed it and turned it over.

Q. To whom? A. To Miss Dorsey, our clerk.

Q. Whose office is she in?

A. A Weiskittel & Son Company's.

Q. Who is at the head of the office?

A. I presume Mr. Heise.

Q. Don't you know? A. I said I thought Mr. Heise.

Q. This afternoon, have you seen those records in Court?

A. No, sir.

Q. Have you seen any records of the products—

A. I have seen no records such as you asked me about this morning in court today.

Q. What are those records which you saw in court this afternoon and respecting which you have heard counsel for both sides have some altercation?

A. They are not daily reports; that is all I can say about

them. I have not seen a daily report in court today. Every daily report that goes through my hands is signed by me, endorsed by me; first it is signed by the inspector and then passed over to me and then I endorse it and hand it in to the office. 1

Q. Aren't those sheets the tabulated sheets by the week or men with the days of the week and the names of the workmen all in columns, so as to show the comparative output of the workmen for those days? A. Not all of it.

Q. Shows part of it? A. Yes, sir.

Q. Those sheets were then made up from those daily reports? A. Made up by my own hand. 2

Q. These reports were made up, then, from your reports?

A. Not from my reports.

Q. What are those reports, then, which you have seen in court? A. They are weekly reports.

Q. These are weekly reports made up at the office from your daily reports?

A. They are made up by me; yes, sir; some of the ware, though, is not on those sheets.

Q. What are made up by you, are the weekly reports made up by you?

Mr. NOBLE: I object to counsel for Government having by his own act subpœnaed the production of the papers in court and attempting to obtain their contents in some other way. If he wants that evidence produced he must produce it in some other way. 3

Mr. GROSVENOR: What is the question?

The question referred to was then read by the stenographer.

Mr. GROSVENOR: Will you answer that question?

A. Well, the weekly sheets are made up by me. They are not reports. I do not consider them reports and we do not call them reports. You may call them reports, but I do not. 4

Q. Are these things which you saw in court the weekly reports that you make up?

A. You may term them weekly reports.

Q. Do you make them up? A. Yes, sir.

Q. You make up these sheets, then? A. Yes, sir.

Q. And you turn them over to Mr. Heise? A. Yes, sir.

1 Q. What is the difference between these and the daily reports which I asked you about?

A. Well, the daily reports are different reports altogether from that.

Q. Yes, but how different?

A. It has it all down, and every man and the time he works and everything else, the kind of material he uses and all.

Q. This has everything that your daily report has?

A. No, sir.

Q. What does your daily report have that this does not
2 have?

A. The amount of fuel, the enamel, the time or anything else, and therefore it would be impossible for me to sit here and tell you what men worked at night and what men worked at day, unless I went over the sheet carefully and traced the time back.

Q. Could not teil from those sheets who worked at night and who worked during the day?

A. I could judge, but I would not go on record for it; as I told you before, I came up here to speak the truth and that is all I am going to tell.

3 Q. That is all we want you to tell. Now, what sheet will tell you who worked at night and who worked during the day from the first of January, 1911?

A. The sheets that we spoke of this morning.

Q. Would the pay roll books show it?

A. The pay roll books would not show the production of the furnace, no, sir.

Q. Is the amount that the workman gets based at all on the amount of material that they use or the time that they work? A. No, sir.

Q. It is just the output that comes from them?

4 A. It is just the output, the production.

Q. These sheets would not show that?

A. These sheets would show what they draw, I presume. I do not figure the amount of pay. I simply put down that they are to be paid for.

Q. In other words, you inspect? A. No, sir.

Q. Your superintendent inspects?

A. I have an inspector and he makes out the sheet with his signature to it and passes it over to me, and I endorse it and pass it into the office.

Q. Then, that determines what he gets? 1

A. Those sheets in court determine what he gets, but the production of the furnace is not on them sheets.

Q. If all you have to tell in determining how much a workman is to be paid—if all you have to consider is in the output, what is the need of these sheets to determine how much he is going to get?

A. I tell you these sheets will tell you that, but you asked about the daily production sheets; that is what you asked me for, if I understood you right, and not the weekly production sheets. I don't know if I understood you right or not, but I think I did. You asked for the daily production sheets. 2

Q. Let me ask it again and make it clear. You testified this morning that you made certain experiments, as you call them, in the use of the hand dredge? A. Yes, sir.

Q. And it developed on cross examination that those experiments were largely done at night? A. Yes, sir.

Q. You testified on direct examination that on the experiment, users of the hand dredge did not make as much money as the other men did— A. I certainly did.

Q. Using the air dredger— A. Yes, sir.

Q. Just wait; you have testified that the men using the hand dredge one turn did not make so much as they made 3 on another turn that is, the same men working with the air dredger? Now, the sheets that I want to get are the sheets that will enable me to determine from your written record what the disparity is, if any, in respect to which you testify?

A. Well, the sheets here (indicating) have no time on them.

Q. Where will that be, that I want to know?

A. That will be on the daily production sheet, because each man's time it put on there, the time he starts to work and the time he stops. I would have to guess at these. The men making the most money I would have to say, Well, to 4 the best of my knowledge, that man worked with the air dredger; now, you don't want any such evidence as that, I don't think.

Mr. GROSVENOR: I have just a few questions to ask you.

Mr. NOBLE: Well, I will have to go now. I made it perfectly clear that I had this engagement in New York.

1 A. I am president of the Colwell Lead Company.

Q. And have been for how long? A. About six years.

Q. And you are a director of the company, are you not?

A. I am a director of the company.

Q. And the active head of the company?

A. That is correct.

Q. Who is the secretary of the Colwell Lead Company?

A. Bert O. Tilden.

Q. How long has he been secretary of the Colwell Lead Company?

A. Well, I should say about five years, maybe six.

2 Q. Has he any active duties to perform in connection with the affairs of the company? A. None.

Q. What are his duties?

A. In connection with the company?

Q. Yes.

A. Why, none, really. He attends a board meeting occasionally and an annual meeting. He has rather a position of convenience.

Q. He executes any official papers which may require his signature as secretary, and attests the seal of the corporation? A. Yes, but that is very rarely.

3 Q. What is his business outside of his connection with the Colwell Lead Company?

A. He is president of the American Sanitary Works Manufacturing Company.

Q. Isn't it a fact that he devotes practically all of his attention to that business, and little, or none, to the Colwell Lead Company?

A. Yes, he devotes all of his time to that business.

Q. Has he at any time in the last two or three years, or more, had anything to do with the manufacture, or sale, of sanitary enameled iron ware in his connection with the Col-

4 well Lead Company's business in that respect?

A. Nothing at all.

Q. You are one of the defendants in this bill in equity filed by the United States of America against the Standard Sanitary Mfg. Co., *et al.*, defendants, in the United States Circuit Court for the District of Maryland? A. I am.

Q. And Mr Tilden is also a defendant in this suit? A. Yes.

Q. And the Colwell Lead Company is also a defendant?

A. It is.

Q. The Colwell Lead Company, yourself and Mr. Tilden are also defendants in the criminal proceedings in the United States District Court in Detroit, brought by the United States Government on the same general subject matter as that referred to— 1

Mr. GROSVENOR: I do not see the materiality of that question.

Mr. HONEYMAN: I simply want to identify the parties with these suits. I have not quite finished my question.

Q. —in this bill in equity. A. That is correct. 2

Q. Both the bill in equity and the criminal proceedings are based upon an alleged violation of the Sherman Act, are they not? A. I presume so.

Q. That is your understanding?

A. That is my belief, yes.

Q. Now, state the business of the Colwell Lead Company.

A. Why, the Colwell Lead Company is a manufacturing jobbing concern. Our jobbing business is the principal part of the business.

Q. You are jobbers of what?

A. Plumbing supplies of all kinds: brass goods, earthenware, porcelain ware, etc. 3

Q. And also lead and iron pipe?

A. Yes, everything that a plumber may use.

Q. What do you manufacture yourself?

A. We manufacture cast iron enameled ware and cast iron soil pipe.

Q. Where do you manufacture these goods that you have just mentioned? A. At Elizabethport, N. J.

Q. Other than these two articles that you have just mentioned you are strictly jobbers, that is you buy what you sell?

A. Our total manufacturing amounts to about $200,000 annually, and our jobbing business amounts to about two million. 4

Q. Do you manufacture all of the enameled iron ware that you sell?

A. We manufacture about half of the enameled iron ware that we sell.

Q. You manufacture half of what you sell?

A. That is correct.

Q. You sell to the plumbers direct, do you not?

1 A. We sell to the plumbers direct.

Q. Do you sell to anybody other than plumbers?

A. No, sir.

Q. You do not sell to jobbers or the public generally, but only to the plumbing trade?

A. We do not sell to the public, and we do not sell to the jobber at all. Of course, if the jobber in the next street wants a piece of our ware we would accommodate him, but it is not our rule to sell to the jobber, and we do not sell to the jobber in quantities; we do not supply the jobber.

Q. If you do sell to the jobber at all it is purely as a 2 matter of accommodation and would be an isolated case?

A. That is it.

Q. You do not know if you do do that?

A. No, but we would do it; that would be the natural sequence in business.

Q. You personally have not charge of the details of the sales of your business? A. No.

Q. But you have general supervision of the sales, as well as all other departments, have you not? A. That is correct.

Q. Now, what do you do with the product that you manufacture at Elizabethport, New Jersey? I mean, what do you 3 do with it after it is manufactured at the factory, what is the first thing you do with it?

A. We ship it to our jobbing houses.

Q. Where are they?

A. New York, Worcester, and Brooklyn.

Q. You have three different branches?

A. Yes. We really have four; we have the main office in New York City, the branch in the Bronx, one in Worcester, and one in Brooklyn.

Q. You have warehouses at those points just mentioned by you? A. We have.

4 Q. And you ship your manufactured enameled iron ware from Elizabethport to the warehouses at these different places? A. That is correct.

Q. Then what do you do with it?

A. Sell it to the plumbers in the vicinity of any of our branches.

Q. In the ordinary course of trade? A. That is correct.

Q. Do you buy enameled iron ware? A. Oh, yes.

Q. From whom? A. Why, I cannot tell you that.

Q. Different manufacturers? A. Yes.

Q. Name some of them?

A. The United States Sanitary, the Standard Sanitary, and Weiskittel, and some of the others.

Q. Different manufacturers? A. Yes.

Q. Your jobbing business is in the different localities that you have named; that is to say, Greater New York, your three branches being in this vicinity, that is the Bronx, Manhattan and Brooklyn? A. Yes.

Q. And your Worcester branch, what territory does that cover?

A. I would say two hundred miles around Worcester. The business of our jobbing houses is a localized business, you know, and it would be hard to say exactly where every piece of goods went, but they go right in the vicinity—as near home as we can possibly go to sell it.

Q. Doctor, is the statement in the bill of complaint that you sell—it refers to all of the defendants, but so far as it concerns your company—that you sell and ship your product generally throughout the United States, and to a less extent to foreign countries, is that correct in reference to the business of the Colwell Lead Company? A. That is incorrect.

Q. Now, doctor, have you ever been in Mount Clemens, Michigan? A. Never.

Q. At any time in your life? A. Never.

Q. You were not present, then, at any meetings held in Mt. Clemens, Michigan, or anywheres in the State of Michigan, of any enameled iron ware manufacturers for any purpose? A. No, sir.

Q. Nor at any time? A. No, sir.

Q. When did you first hear of any of the meetings referred to in the bill in equity, and in the indictment in the criminal proceedings?

Mr. GROSVENOR: I object to that question as too general. The bill in equity does not refer to any specific meetings, or any general meeting.

Mr. HONEYMAN: There is the allegation in a clause in the exhibits in the bill of complaint, in the criminal proceedings, where you set forth overt acts—you set forth specific meetings in Mt. Clemens.

Q. When did you first hear of any of the meetings referred to in the bill in equity, or in the indictment, meetings of manufacturers in Michigan?

1 Mr. GROSVENOR: I object to that question, because it is entirely too broad. The record shows that there have been a lot of meetings in Chicago, Pittsburgh and New York. Mt. Clemens was only a committee meeting, and it seems to me the question should be directed to a particular meeting.

Mr. HONEYMAN: I asked him when he first heard of any of the Mt. Clemens meetings.

Mr. GROSVENOR: If that question is confined to meetings in Michigan, I have no objection to it.

Mr. HONEYMAN: I will confine it to Michigan.

2 (Question repeated to the witness.)

A. Why, in the summer of 1911.

Q. In the summer of 1910, I guess you mean?

A. Yes, after this suit was instituted.

Q. Now, doctor, were you present at any meeting in Pittsburgh, or New York, during the months of February, or March or April, 1910, where there were any manufacturers of enameled iron ware present? A. No, I was not.

Q. Were you present at any meeting in Chicago at any time in the spring of 1910, any time between January and July, 1910, at any meeting of manufacturers of enameled
3 iron ware? A. I was not.

Q. When did you first hear of any of those meetings in Chicago, or Pittsburgh, or New York?

A. In 1910; in the summer of 1910, after this suit was started; I did not know anything about any meetings before that.

Q. Doctor, where were you in the spring of 1910, March and April?

A. In March and April I was in Arizona, New Mexico, California and Mexico.

Q. Were you at any time after the very early part of
4 March, and prior to the latter part of April, east of New Mexico?

A. I think I was for one day; I think I came east as far as St. Louis, and went back the same night. I stopped one day there, but it was on other business, and it had nothing to do with the plumbing supply business.

Q. While you were in the West, during the months stated, did you meet any manufacturers of sanitary enameled iron

ware, or did you have any conferences with any manufacturers of enameled iron ware? 1

A. I did not have any conferences with any manufacturers of iron enameled ware on business matters, no.

Q. When did you first hear of the Arrott patent?

A. During the progress of the suit brought by the Standard Company to establish their right to the Arrott patent; I do not remember what year it was; it was about 1908, wasn't it?

Q. Somewheres around 1908?

A. Yes. It is mentioned in those papers somewheres, but I do not remember exactly the date. It was the suit against the Mott Company. 2

Q. When did you first begin to use the Arrott patent in the Colwell Lead Company?

A. In the early summer of 1909.

Q. It was at that time that you installed the dredgers in your factory at Elizabethport? A. Yes.

Q. From whom did you get the right to install them in your factory?

A. From the Standard Sanitary Manufacturing Company.

Q. Did you have a license agreement with them? 3

A. I had an agreement with them, yes, a license agreement.

Q. On a royalty basis? A. Yes.

Q. And you have used the Arrott devices continuously ever since in your factory, have you not? A. We have.

Q. And are using them today?

A. Yes. When you say "continuously," you mean continuously excepting for breakdowns, etc?

Q. Yes, of course. A. Yes.

Q. I assume you may discontinue the use of the furnace for some reason or another, and you could not use the device, but whenever you use the furnace you use the device? 4

A. Yes, right straight along.

Q. Why did you put the Arrott devices into use in your factory?

A. Because we considered the Arrott dredger of great commercial value to us.

Q. Did you have any special reason for using it?

A. Oh, yes. We could make a better quality of ware; we could make it cheaper, and it is easier on the men.

1 Q. You considered it good business judgment for the Colwell Lead Company to use the Arrott devices?

A. Yes, we did, otherwise we would not have done so.

Q. That licensed arrangement that you made with the Standard Sanitary Company, were there any other persons a party to that arrangement other than the Colwell Lead Company and the Standard Sanitary Manufacturing Company?

A. None whatever; the Standard Sanitary Manufacturing Co. gave us the terms and we simply accepted them and went ahead.

2 Q. You have no arrangement, or agreement, or understanding, with any other manufacturer of enameled iron ware in connection with that, have you? A. No.

Q. Had Mr. Wayman anything to do with your procuring that license? A. Nothing whatever.

Q. When did you first meet Mr. Wayman with reference to your taking any license from him?

A. Why, after I returned from the West last spring, in the early part of May, I should say.

Q. And you returned on what day?

A. I think about the 28th of April—about the 28th or

3 the 29th of April.

Q. And it was some little time after your return that you met him? A. A little while after that, yes.

Q. Where did you see Mr. Wayman?

A. In New York City.

Q. Did he come to your office?

A. That is my recollection.

By Mr. GROSVENOR:

Q. Do you say that is the first time that you met Mr. Wayman?

4 A. No, I had met him before, but not in connection with this matter.

By Mr. HONEYMAN:

Q. You had not met him before in connection with this Arrott patent? A. No, sir.

Q. What did he say to you on this occasion?

A. Well, it would be a little bit difficult to remember exactly what he did say, but in a general way I could tell you.

Q. Just tell us substantially? 1

A. In substance his conversation was to the effect that he had the Arrott patent, and that he was issuing the license to manufacturers, and that he would issue a new license to us.

Q. Did he say anything about its being necessary for you to have a new license? A. Oh, yes.

Q. What did he say?

A. He owned the patent, and our agreement had been made with the Standard Sanitary Company, and that agreement ceased when he took the ownership of the patent.

Q. Did you have any talk with him about your business 2
in respect to this license agreement?

A. Well, yes, I wanted to make a license agreement with him for the use of the patent, so that we could continue using the dredger, and we finally consummated such arrangement.

Q. You finally consummated an arrangement? A. Yes.

Q. Was your arrangement similar to the license which he first proposed to give you?

A. Why, no. We had a rider in our license agreement that made considerable change in it.

Q. Did he say anything to you about the license agree- 3
ments being uniform with the different manufacturers?

A. Yes, the license agreements were supposed to be uniform among all manufacturers, but we were in rather a different position; we are not manufacturers in that sense of the term. We simply ship to our own warehouses and sell direct to the plumber, and are not considered manufacturers in that sense.

Q. Did you say anything to him about the jobbers' license agreements in that sense not applying to your business at all? A. It did not affect us; we do not sell jobbers.

Q. Did you say anything to him about it? 4

A. I do not remember whether I did or not. It did not make any difference anyway, as it is a matter that does not concern us.

Q. Did you ever execute a jobbers' license agreement?

A. No.

Q. Did you ever ask anybody to make one? A. No, sir.

Q. Did you ever maintain any uniform scale of prices after you made your arrangement with Mr. Wayman?

A. No, we did not. The rider in our agreement practi-

1 cally made our contract the same as our agreement was before with the Standard Company.

Mr. Grosvenor: I object to the statement of what the rider contained, the rider being now in evidence as part of the exhibits and it speaks for itself. I move that the answer be stricken out.

By Mr. Honeyman:

Q. Coming back to the meetings, doctor, was the Colwell Lead Co. represented at any of those meetings, either in Michigan, or Pittsburgh, or New York, or Chicago?

2 A. No, sir.

Q. Were they represented either directly or indirectly?

A. No.

Q. As I understand it, doctor, the form of license proposed to you by Mr. Wayman was specially altered in your case by some additional provisions in writing?

A. That is correct.

Q. So that, so far as you know, it is not similar to what Mr. Wayman told you was the uniform license?

A. That is correct.

Q. And I want you to repeat, for the sake of definiteness,

3 the provisions with respect to a re-sale and maintenance of price, that did not apply to your business? A. It did not.

Mr. Grosvenor: I object to that question as calling for a conclusion of the witness; on the ground that the rider speaks for itself; and therefore move that the answer be stricken out.

Mr. Honeyman: I want to call attention to the fact that on page 42, of volume 2, of the record in this case, "statements referring to exhibits," it is stated that exhibits (being the license agreements with Way-

4 man) numbers 13 to 28, are all identical with petitioner's exhibit No. 9. That statement is incorrect for the reason that the Colwell Lead Company's license, Exhibit No. 14, is different from the other exhibits in that it has a certain typewritten provision, or provisions, in the agreement and has a rider attached, being materially varied.

Mr. Grosvenor: Counsel for the Government states that this rider referred to by counsel for the Colwell Lead Company, being a letter signed, "E. L. Way-

man," dated May 24th, and addressed to the Colwell Lead Co., and marked "accepted May 25, Colwell Lead Company, J. T. Duryea, president," that part of this exhibit No. 14 will be printed by the Government and inserted in the record in the volume 2 of exhibits at page 42. 1

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Duryea, you say that you obtained a license from the Standard Mfg. Co. to use the Arrott patent, in the summer of 1909?

A. I said I made an agreement with them, yes.

Q. Was it a written agreement? 2

A. I think not; it was done through correspondence, however.

Q. Correspondence with which officer of the Standard Sanitary Manufacturing Company?

A. Well, I could not tell you that from memory, but it was done with the officers of the Standard Sanitary Manufacturing Company.

Q. Do you know the officers of the Standard Sanitary Manufacturing Company? A. I do.

Q. What were the terms of that contract? 3

Mr. HONEYMAN: I object to that as the letters speak for themselves; the witness has testified that the matter was a subject of correspondence.

Mr. GROSVENOR: This is a proper cross examination with respect to a matter which counsel for the defense brought out.

(Question repeated to the witness.)

A. One dollar a day per furnace.

Q. Per furnace? A. Yes.

Q. Was the contract of definite duration?

Q. No, it was not. 4

Q. The contract was subject to termination at any time?

A. The contract was subject to termination at any time.

Mr. GROSVENOR: I will ask counsel to produce these letters showing the contract, at the next hearing.

Q. Mr. Duryea, your warehouses are located, you say, in New York City, in Brooklyn, and in Worcester, Mass.?

A. Yes, and in the Bronx.

Q. You have those four? A. Yes.

1 Q. Where are your customers located, and remember that I am confining myself in my questions to the enameled ware business only, only to that part of your business?

A. Why, within a radius of probably two or three hundred miles of each branch.

Q. That is two or three hundred miles of Brooklyn?

A. Probably not as much as that here.

Q. Within how many miles?

A. Well, it would be pretty difficult to say; it may not be more than one hundred miles.

Q. You sell to plumbers in New Jersey, do you not?

2 A. Oh, yes.

Q. Very largely?

A. Not very largely, but to some extent.

Q. Does your trade from your Worcester warehouse extend throughout New England?

A. No, our trade I doubt if it goes beyond Massachusetts. The trade there is circumscribed; it is only a small branch.

Q. How is your branch in the Bronx, does it extend up to Connecticut?

A. No, we sell through New York in Connecticut.

Q. That is from your New York office?

3 A. Yes, from the ware rooms.

Q. From what office did you supply, or do you supply New Jersey? A. From the New York office.

Q. Now, when did you first meet Mr. Wayman?

A. The first time that I ever met him? A. Yes.

A. I could not remember; several years ago; maybe three years ago; four years ago I guess.

Q. The first time you ever spoke to him about the license agreement was on May 20th, after you returned from the West? A. I did not say May 20th; I said early in May.

Q. It was some time in May when you first had a con-

4 ference with him in regard to taking out a license agreement?

A. That is correct.

Q. It is a fact that prior to that time you had been in correspondence with him in regard to taking a license agreement?

A. While I was in the West I received several letters—in fact, one or two telegrams from my own office, and I answered them to the effect that I would do nothing about it until my return.

Q. When did you leave for the West?

A. I think it was the 5th of March. 1

Q. And prior to that time you had been in correspondence with him in reference to taking out a license agreement?

A. Not that I recall.

Q. You have no recollection of that? A. No, sir.

Q. You were not present you stated at the meeting in Pittsburgh of February 1st? A. No, sir.

Q. Do you recall any correspondence with Mr. Wayman shortly after that meeting with reference to all the manufacturers going into a license arrangement under the Arrott patent? A. I do not recall any such correspondence.

Q. You do recall that you received letters from him about 2
that time in relation to that matter, do you not? A. No, sir.

Q. You have no recollection of any kind on that subject?

A. No, sir, I have no recollection of hearing from Mr. Wayman in regard to a license arrangement until I was in the West.

Q. And you left for the West at what time?

A. Fifth of March.

Q. I will read you Petitioner's Exhibit No. 77, being a letter dated March 15th, 1910, addressed to Mr. E. L. Wayman, "Dear sir: Yours of 19th, enclosing memorandum of agreement just received. In the abstract it looks good to 3
me providing all manufacturers sign up. However, I do not care to go on record regarding it until I have had an opportunity of going over it in detail with you, though, of course, we will be greatly influenced by what the other manufacturers do.

"I expect to be in my office about the 1st of April and will be glad to hear further from you.

"Yours truly,

"J. T. Duryea."

Do you recall writing that letter? 4

A. It was written from the West.

Q. Written by you? A. Evidently.

Q. Does that letter refresh your recollection as to correspondence with Wayman in respect to taking out a license agreement?

A. No, as I say I received several letters and several telegrams while I was in the West, which I replied to along these lines.

Q. You then did know at that time while you were in

1 the West that there was under consideration by the manufacturers of enameled ware, that they should all enter into an arrangement under the Arrott patent?

A. Yes, and I have already said so; I received letters from Mr. Wayman while I was in the West.

Q. About that matter? A. Yes.

Q. This expressed your views of the matter at that time (indicating Petitioner's Exhibit No. 77)? A. At that time.

Q. You say there "in the abstract it looks good to me providing all manufacturers sign up." You mean there the manufacturers of the Sanitary Enameled iron ware, do you
2 not?

Mr. HONEYMAN: I object to that, as the letter speaks for itself.

Mr. GROSVENOR: I want to know who you meant by "all manufacturers?"

A. Why, the manufacturers of enameled ware, of course.

Q. "However, I do not care to go on record regarding it until I have had an opportunity of going over it in detail with you." You went over it in detail with him after you returned from the West in May, is that right?

3 Mr. HONEYMAN: I object to that as the conversation which he had with Mr. Wayman will speak for itself as to what that was.

Mr. GROSVENOR: Answer the question.

THE WITNESS: I had a conference with Mr. Wayman, yes, after my return.

Q. And as a result of that conference the rider was attached to the printed contract which modified, in that degree, your contract with Wayman. That is, I mean it made your contract with Wayman different from the other contracts of the other manufacturers? A. That is correct.

4 Q. Then reading that letter, "of course, we will be greatly influenced by what the other manufacturers do." That was the expression of your feeling at the time the letter was written, March 15th, 1910, is that right?

Mr. HONEYMAN: I object to that, as the letter speaks for itself.

THE WITNESS: Certainly.

Q. You meant by "other manufacturers" there what? Did you mean manufacturers of sanitary enameled iron ware?

A. Exactly.

Q. You continue: "I expect to be in my office about the 1st of April and will be glad to hear further from you." There has been introduced, Mr. Duryea, a memorandum of agreement—you will note this letter says, "memorandum of agreement," as Exhibit No. 3. The witness Wayman testified this was drawn up early in March, 1910. Is that a copy of the agreement which was sent to you in his letter of the 9th, and to which you referred in your letter of 15th?

A. I could not tell.

Q. Glance it over and tell me whether it is of about the same character?

A. I really could not tell; I was on a pleasure trip and stuffed that stuff in my valise and never looked at it; I do not believe I opened the contract even, but I wrote Wayman an answer to his letter, without looking at his papers. I would not bother with them at that time.

Q. Now, I will read you an earlier letter dated February 14, 1910, addressed to Mr. E. L. Wayman, marked Petitioner's Exhibit No. 76.

Mr. HONEYMAN: Is that an original?

Mr. GROSVENOR: It is the exhibit. The original was returned to counsel for the defendant and this was put in evidence without objection.

Mr. NOBLE: My recollection about that, if I may amend the Government counsel's suggestion, was that there was no original, but that Mr. Wayman stated he thought he remembered receiving a letter, and it went in in that way.

Mr. GROSVENOR: This is a copy of a letter received by me from counsel for the defendants last July, and this copy was made in my office, the original being returned to counsel for the defendants in September. When Mr. Wayman was put on the stand it was offered in evidence and accepted without objection.

Q. "Mr. E. L. Wayman, Dear sir: Replying to yours of 10th, your reading of our letter of 9th inst. is entirely correct. We will not require any preferentials below the lowest prices made by the Standard Sanitary Mfg. Co. Yours truly, Colwell Lead Co., J. T. Duryea." Then there are the initials J T D—BH. Do you recall writing that letter?

A. No, I do not.

Q. You do not? A. No, sir.

Q. Would your initials be on that letter if you had not written it? A. They are not apt to be.

Q. Then it is probable that you wrote it? A. It is.

Q. That indicates, then, that at that time you were in correspondence with Mr. Wayman about the preferentials that should be allowed to your company if a license arrangement was arrived at? A. I could not say.

Q. You say there, "We will not require any preferentials below the lowest prices made by the Standard Sanitary Mfg. Co.

A. That is true, but whether these preferentials were to be based on this license agreement I could not say; I do not remember that letter.

Q. What could they be based on then?

A. I do not know.

Q. You cannot suggest anything else other than the license arrangement? A. Scarcely.

Q. And probably it was that?

A. Quite probably. However, I have no recollection of it at all.

Q. But it is a fact then that your company was corresponding with Mr. Wayman from the early part of 1910 in reference to this license arrangement?

Mr. HONEYMAN: I object to that because it calls for a conclusion, and further that the letter speaks for itself, and on the further ground that it is improper to characterize the correspondence.

THE WITNESS: The letter speaks for itself. I have no recollection of it.

Q. After this contract was signed with Mr. Wayman, you used the re-sale price-lists in your business, did you not?

A. No, sir.

Q. You understand, do you not, that the re-sale price lists fixes the price of the manufacturer to the jobber, and also the price of the jobber to the plumber?

A. That is my understanding.

Q. You say you did not use the resale price lists in making your sales to the plumber? A. No, sir.

Q. Who is Mr. Geddes? A. He is our purchasing agent.

Q. You testified that you do not follow the details of the selling end of your business? A. That is correct.

Q. Would you know whether or not you did use the resale price lists? A. I think I would. 1

Q. Are you positive you would? A. I am.

Q. Do you know whether you ever had any resale price lists in your establishment? A. Surely we had.

Q. How many did you have?

A. I could not tell you; we had quite a few I presume.

Q. What did you have them for, if you didn't need them?

A. We get a hold of every price list we can, and a hold of every catalogue we can, no matter whose it is. We want to know what is going on and what prices are being used by others.

Q. I read your letter dated May 25, 1910, addressed to Mr. Wayman— 2

Mr. HONEYMAN: Is that the original letter?

Mr. GROSVENOR: It is a copy of the original which was returned to counsel for the defendants, and I will ask counsel for the defendants to produce the original at the next hearing—that is this afternoon—and if they cannot produce it—

Mr. HONEYMAN: How would I have an original written by the Colwell Lead Co. to somebody else. We do not have our originals. We have theirs. 3

Mr. GROSVENOR: Mr. Honeyman has been substituted as counsel for the defendants, Colwell Lead Company, and for his information I would say that the original, of which this was a copy, was obtained from Noble, Jackson & Hubbard, who, until today, have been counsel of record for the Colwell Lead Co. I will use this letter now and ask that the original be produced either by Mr. Noble, counsel for Mr. Wayman or by Mr. Honeyman this afternoon.

Mr. HONEYMAN: Mr. Honeyman desires to state he is counsel for the Colwell Lead Co., for Mr. Duryea and Mr. Tilden, that he is not counsel for Mr. Wayman and never was; that the desire of Mr. Honeyman's clients is to separate themselves from the other defendants. We have no control over the original papers of the other defendants. 4

Mr. GROSVENOR: Then I will modify my request and ask Mr. Honeyman to produce the letter-press copy books containing this letter, or the file copy on the

files of the Colwell Lead Co., in the office of the Colwell Lead Co. at Lafayette & walker Sts., the letter being dated May 25, 1910, and addressed to Mr. E. L. Wayman. I will make that request of him instead of asking him to produce the original.

Mr. HONEYMAN: Mr. Honeyman objects to counsel for the Government reading what purports to be a copy of the letter for the purpose of the cross examination of this witness, who knows nothing about the letter so far as the record now appears. There is no evidence on the record that the witness knows anything about any such letter.

Mr. GROSVENOR: I will ask you then to produce that letter this afternoon, and I will just ask the witness if he knows anything about a letter of that character being written by his company.

THE WITNESS: I know nothing about that letter, but it would be a letter in the natural course of business.

Mr. GROSVENOR: Will you mark this, Mr. Examiner, as Petitioner's Exhibit 281?

Mr. HONEYMAN: I object to any paper being marked "Exhibit" unless it is proven. It could be marked for identification as the paper that was handed the witness.

Mr. GROSVENOR: I expect to either have the original copy or the original. I know you gentlemen will produce one or the other for me, and I want it to go in the record.

Mr. NOBLE: I object, on behalf of my client, to any letter going in evidence marked as an exhibit which has not been proved. I have not seen the letter and have no knowledge of its character.

Mr. GROSVENOR: Just hand it over to him, Mr. Examiner.

Q. Who has charge of the files at your New York office?

A. Why, a young lady by the name of Miss Tribert.

Q. What are her initials? A. I really do not know.

Q. Does she have the custody of the correspondence of the company? A. Yes, she has charge of the files.

Q. I will read this letter now: "Mr. E. L. Wayman, Dear sir: Referring to yours of 19th, we will need about 36 copies

of the re-sale price lists for the use of our office and sales- 1
men. Yours very truly, Colwell Lead Co., Henry B. Geddes."
Are you still under license agreement with Mr. Wayman?

A. Yes, sir.

Q. It has not been cancelled? A. No, sir.

Q. I show you the rider which is attached to Petitioner's Exhibit 14, which is the license agreement between the Colwell Lead Co. and E. L. Wayman, said rider being a letter dated May 24th addressed to the Colwell Lead Co. by E. L. Wayman, and I ask you if that is the modification of the license agreement which you testified to on direct examination.

2

Mr. HONEYMAN: I object to that, as the paper speaks for itself.

Mr. GROSVENOR: I want to have it identified.

Mr. HONEYMAN: Do you want him to identify Mr. Wayman's signature, is that the proposition, or to identify the agreement?

Mr. GROSVENOR: I want to have him identify this part of the agreement and the rider which he referred to on his direct examination.

Mr. HONEYMAN: I object to the witness identifying 3
particular portions of an agreement. It seems to me that the counsel for the Government should either prove the whole agreement by this witness, or prove it by some other witness, but not identify particular portions of riders, or matters of that sort in this way.

Mr. GROSVENOR: Counsel for the Government calls the attention of the counsel for the defendant to the fact that the witness is holding in his hand Exhibit 14 with the letter which is attached thereto, and which has been called "rider." The question is addressed to the witness for the purpose of identifying the rider. 4

(Question repeated to the witness.)

THE WITNESS: That is the paper.

Q. That is your handwriting, "accepted May 25, Colwell Lead Co., J. T. Duryea, President."

Mr. HONEYMAN: I object to that, as the paper speaks for itself.

1 Mr. GROSVENOR: I want to identify this signature here.

Mr. HONEYMAN: I object to the counsel for the Government proving the agreement by the witness. It seems to me that the Government should not prove the agreement in this case by this witness.

Mr. GROSVENOR: The Government withdraws the question.

Q. You appeared voluntarily here, Mr. Duryea, did you not? A. No, sir, I was subpœnaed.

Q. You are the defendant here? A. Yes.

2 Q. You were subpœnaed by whom?

A. Well, that I do not know; I was notified to be here.

Q. Let me have a copy of your subpœna, have you it with you? A. I haven't it with me, no, sir.

Mr. HONEYMAN: I have the original, but have not the copy (handing paper to Mr. Grosvenor).

Mr. GROSVENOR: This will do.

Mr. HONEYMAN: I know it was served on him, although I did not serve it.

3 Mr. GROSVENOR: I offer that subpœna in evidence as Petitioner's Exhibit 282.

Q. Mr. Duryea, you testified that half of the enamel ware you manufactured, and half you buy as jobbers, is that correct? A. It is.

Q. And you mentioned the United States and the Standard Sanitary and Weiskittel, that is right, is it not?

A. That is right, and others.

Q. And you buy from their factories at Baltimore and Pittsburgh? A. Wherever they may be located?

Q. Now, do you buy as a jobber?

4 A. Yes, we buy as a jobber.

Q. The goods are shipped to your places?

A. To our warehouses.

Q. From their factories? A. Yes.

Q. How long has your company been manufacturing sanitary enameled ware? A. About nine years.

Q. Prior to the installation of the Arrott patent you used the hand method, the Arrott patent being installed in the summer of 1909? A. Yes.

Q. Did you have a dredge that was supported?

A. We had a dredge that was supported only by the operator; it was supported around his neck. 1

Q. How is your Arrott dredger supported?

A. My recollection is that there is no support except that the man holds it in his hand. I am not very clear on that.

Q. You are familiar with the manufacturing end?

A. Not so familiar with that as I am with the business end.

Q. Do you know what the length of the dredger is that you use? A. Now?

Q. Yes. A. Why, I should say about three feet.

Q. A three foot handle. Do you use the same size for small ware and tubs? 2

A. Just a moment, let me think on that for a moment; I think the handle is probably nearer five feet. We have a smaller one for the small ware.

Mr. GROSVENOR: Well, I think I have made it clear to the counsel for the Colwell Lead Co. that I want the correspondence which gives any evidence of the contract between the Colwell Lead Co. and the Standard Sanitary Mfg. Co., showing the contract entered into between these companies with respect to the license to use the Arrott patent in the summer of 1909. 3

Q. Do you know how much you paid the Standard Mfg. Co. during the year 1909 for the use of the Arrott patent?

A. I could not tell.

Q. Do you know how much you paid that company for the use of the Arrott patent during the year 1910?

A. No, I could not tell.

Q. Can you state it approximately?

A. It would be a guess.

Q. Who would know about that? 4

A. Why, our auditor would know.

Q. Who? A. Our auditor.

Q. What have you done with your correspondence with Mr. Wayman with respect to this license agreement?

A. Why, I turned my correspondence over to Mr. Noble, or to Noble, Jackson & Hubbard.

1 RE-DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Doctor, referring to Petitioner's Exhibit No. 77, I ask you whether you ever saw that paper before (handing paper to witness)? A. I never saw this paper before.

Q. Have you any recollection of having written any such letter.

A. Well, I know I wrote some letter to Mr. Wayman last March from out West, but I could not tell. Lord Heavens! I have written a million letters since then. I do not know whether that was it or whether I ever wrote that, but I presume I did.

2 Q. But you do not know anything about it?

A. I do not, no.

Q. Have you ever seen Petitioner's Exhibit No. 76 before today (handing paper to the witness)?

A. Well, I have never seen this paper, no.

Q. Have you any recollection of ever having written that letter, or any letter similar to that?

A. No, I have no recollection of having written it.

Q. Doctor, in your purchases as a jobber, from the Standard Sanitary Mfg. Co. and Weiskittel, and the others, whose names you have mentioned, did you ever sign any

3 resale agreement with them? A. Never.

Q. In answer to counsel for the Government, you stated that the paper shown you was the rider referred to by you as part of the contract, or agreement, with Mr. Wayman, is that correct? A. That is correct.

Q. Now, doctor, you stated that your New York office sometimes shipped some goods to New Jersey, was that after they had been sold or before? A. After they had been sold.

Q. If a plumber comes in from Jersey City and buys a tub, you will ship it over to Jersey City for him? A. Yes.

Q. And the same is true of your Connecticut business

4 from your New York office? A. Oh, yes.

Q. Is that what you referred to in your statement that you made some sales in New Jersey and some in Connecticut? A. That is it.

Q. Did you ever talk with any of the other defendants named in this bill of equity, other than Mr. Wayman as you have already testified, respecting any uniform license agreements, or arrangement, for the Arrott patent, or for the making of any uniform license agreements at any time dur-

ing 1910 and prior to the institution of this suit? 1

A. No, Mr. Wayman is the only one I ever talked to about the matter until after this suit was started.

RE-CROSS EXAMINATION BY MR. GROSVENOR:

Q. You knew that Mr. Wayman was seeing the other manufacturers also about the matter, didn't you?

MR. HONEYMAN: I object to that question. I think the counsel should ask the witness questions as to conversations, and as to what took place, but a general question like that as to what the witness knew, or had reason to believe, is hardly evidence. 2

(Question repeated to the witness.)

A. I presume he was.

Q. Don't you know he was?

A. No, I did not know he was doing it, but I presume he was though.

Q. What do you mean by your statement in the letter of March 15th, "it looks good to me providing all manufacturers sign up?"

MR. HONEYMAN: I object to that.

THE WITNESS: I did not know whether he was seeing other manufacturers or whether he was not. 3

MR. HONEYMAN: Do not answer the question when I object. I want to object to the question, and move to strike the answer out on the ground that the witness stated that he did not know whether he had ever written any such letter.

MR. GROSVENOR: He said he presumed he did write it.

MR. HONEYMAN: He presumed he knew this and he presumed he knew that, but the question does not call for presumption; the question calls for knowledge of the witness. I object to the witness' presuming, and to the counsel presuming as two presumptions amount to an absurdity very often as a matter of evidence. 4

BY MR. GROSVENOR:

Q. What do you mean by this other statement: "we will be greatly influenced by what the other manufacturers do?"

Mr. HONEYMAN: I object to that, as the statement speaks for itself.

THE WITNESS: We naturally would be influenced by what others did in our line of business.

Q. Such as entering into a license arrangement?

A. In any way, in any form of business methods.

Examination of Witness Concluded.

Signature of the Witness Waived.

BERT O. TILDEN, a witness produced on behalf of the Colwell Lead Co., and on his own behalf, after having first been duly cautioned and sworn by the Examiner to tell the truth, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Tilden, you are the Secretary of the Colwell Lead Co.? A. I am.

Q. And have been for how long? A. For five years.

Q. You are one of the defendants in the bill in equity and in the criminal proceedings in Detroit? A. I presume I am.

Q. That is your understanding? A. It is.

Q. You were subpœnaed to appear this morning?

A. I was.

Q. Have you any active duties in connection with the business of the Colwell Lead Co.? A. No, sir.

Q. How long has it been since you had any active business there? A. About three years or more.

Q. You are president of the American Sanitary works?

A. I am.

Q. And all of your time and attention is devoted to the business of that company, is it not? A. It is.

Q. That company is not engaged in the manufacture of enameled iron ware? A. It is not.

Q. What do you do in connection with the affairs of the Colwell Lead Co.?

A. If I am in the city I attend an occasional meeting, annual meeting, and sign what necessary papers I am asked to sign as secretary.

Q. When did you first hear of the Arrott patent?

A. In a Montreal newspaper last August. I was on an automobile tour.

Q. That is August, 1910? A. It is.

Q. When did you first hear of any license agreement from Mr. Wayman relating to the Arrott patent, or relating to anything else?

A. Well, I never paid any attention to it; I was never interested.

Q. When did you first hear of any license on the part of the Colwell Lead Company from Mr. Wayman?

A. At that time that I saw it in the newspaper.

Q. And that was in August, 1910? A. It was.

Q. You never heard of it before that? A. No, sir.

Q. Did you ever attend any meeting of manufacturers of enameled iron ware? A. I did not.

Q. Were you present at any of the meetings in Michigan or Pittsburgh, Chicago or New York during 1910, where there were any enameled iron ware manufacturers?

A. I was not.

Q. What do you know about any of the matters or things alleged in the bill in equity or in the indictment proceedings, of your own knowledge? A. I do not know anything.

Q. Do you ever see any of the correspondence between the Colwell Lead Co. and other people?

A. Practically nothing.

Q. Have you anything to do with their sales or purchases? A. Nothing whatever.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Are you a director of the Colwell Lead Company?

A. I am.

Q. Do you attend the meetings generally?

A. Occasionally. I am out of the city a great deal of my time.

Q. Are you a salaried officer of the Colwell Lead Company? A. I am not.

Q. Do you have the custody of the minutes of the meetings of the directors of the Colwell Lead Company?

A. They are in the company's safe; I have not the combination of the safe.

Q. Do you, as secretary of the company, have custody of the minutes of the meetings of the Board of Directors of the Colwell Lead Co.? A. Have I custody of them?

Q. I will have the question read to you and request that you answer it yes or no.

(Question read to the witness.)

A. They are not in my possession.

Q. Just answer the question yes or no.

A. If you define the word "custody" for me, probably I will be able to say yes or no.

Q. Supposing someone would go to the Colwell Lead Co. with authority to see the minutes of the meeting of the Board of Directors, are you the proper officer to ask for them—in other words, are you charged under the by-laws of the Colwell Lead Co. with the custody and possession of the minutes of the meetings of the Board of Directors of which you are the Secretary? A. I presume I could find them.

Q. Now, will you answer that question yes or no?

A. Why, I would say yes, I could find them.

Q. You are the one to go to to get them from?

A. I do not recall what our particular by-law would be in that particular. I do see them, yes.

Q. Do you sign them? A. I do.

Q. Have you your subpœna with you?

A. I have (handing paper to counsel).

Mr. GROSVENOR: I will offer this in evidence.

Paper referred to was then marked Petitioner's Exhibit 283.

Q. Do you know whether there was a meeting of the directors of the Colwell Lead Co. to authorize the entering into of a contract with Mr. Wayman? A. I do not.

Q. Do you know anything at all about the enamel business? A. Practically nothing.

Q. Now, in this answer here you have sworn to a lot of things about the business. Did you ever see an article of enamel ware made? A. I have.

Q. By the old method?

A. What do you mean by the old method?

Q. When did you first see a tub made in your establishment? A. About six years ago.

Q. What sort of a dredge did they have, do you know?

A. Yes, they had a dredge that goes around the neck of the operator and he stands back there and works it.

Q. It was not supported from the ceiling?

A. It was not.

Q. Do you know whether the present dredger is supported from the ceiling or not?

A. I haven't been there for three years; I do not know whether it is or not. 1

Q. You haven't seen the actual operation of the new dredger? A. I have not.

Q. In your answer under paragraph 7, and in the ensuing paragraphs, is set out what purports to be the advantages of the Arrott dredger. You are just speaking from the intimation you gathered from others.

A. I have seen it in other factories.

Q. Where? A. Ahrens & Ott, in Louisville.

Q. When did you see it there?

A. About three years ago. 2

Q. Is that the only time you have ever seen it?

A. It is the only time that I recall now, yes.

Q. You do not pretend to know anything about the mechanical end of the enamel business, do you?

A. I do not, not of the enameled iron business.

RE-DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Tilden, after you saw this dredger at the Louisville factory, did you make any report of what you saw to Dr. Duryea?

A. Yes, I told him it was a labor-saving device and that they were doing better work. It could be worked with one less man to a crew. 3

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. How many men do you have on a crew?

A. Why, as I recall, we have three.

Q. Now? A. I do not know.

Q. You do not know how many men you have now to a crew? A. I haven't an idea.

Q. But you used to have three?

A. I think so, as I recall them. I never had anything to do with the factory, and I only know the factory from casual observation, going there as a guest, so to speak. 4

Mr. NOBLE: I would like to ask the witness a question or two.

Mr. GROSVENOR: You are asking the questions as counsel for the other defendants?

Mr. NOBLE: Yes.

Mr. GROSVENOR: That is as counsel for those other

than the Colwell Lead Co. and Mr. Duryea and Mr. Tilden?

Mr. NOBLE: I would like to ask some questions on behalf of the other defendants than the Colwell Lead Co. and also other than Dr. Duryea and Mr. Tilden.

BY MR. NOBLE:

Q. Mr. Tilden, did you ever have any agreement with any of the other manufacturers of sanitary enameled iron ware, mentioned as defendants in the suit pending in the Circuit Court of the United States in Baltimore, and in the indictments against the same defendants at Detroit, relative to the maintenance of prices, or restrictions on sales, or any other matters connected with the license agreement?

A. I did not.

Examination of the Witness Concluded.

Signature of the Witness Waived by Agreement.

Mr. GROSVENOR: Counsel for the Government renews his request that the counsel for the Colwell Lead Co., Mr. Honeyman, will produce that letter of February 14th, and the other letter signed by Gettes, and will also produce the correspondence with the Standard Sanitary Mfg. Co. showing its contract with the Colwell Lead Co. for the license of the use of the Arrott patent.

Mr. HONEYMAN: Mr. Honeyman, counsel for the Colwell Lead Co., repeats that he has not the originals of Exhibit 76 and 77 for obvious reasons.

Mr. GROSVENOR: Of course, I mean the copies.

Mr. HONEYMAN: As for the other correspondence, I do not know where it is at the present time. It will have to be looked up. I certainly haven't it in my possession, and I know Mr. Noble hasn't it in his. What we can find is a matter of conjecture.

Mr. NOBLE: I would like to adjourn now until tomorrow morning, March 23rd, in Pittsburgh, Pa., where I wish to take testimony Thursday and Friday.

Mr. GROSVENOR: That is satisfactory to me.

THE EXAMINER: At what time?

Mr. NOBLE: We will say 11 o'clock, in Pittsburgh

tomorrow, March 23rd, 1911, at the Federal Building. 1

Thereupon, at 12:30 P. M. the hearing was then adjourned to meet again tomorrow morning, March 23rd, in Pittsburgh, at the Federal Building.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

UNITED STATES OF AMERICA 2

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Federal Building, Pittsburgh, Pa.,
11:00 o'clock A. M., March 23, 1911.

Met pursuant to adjournment at 11 o'clock A. M., Federal Building, Pittsburgh, Pa., at which time and place the following depositions were taken on behalf of the Standard Sanitary Manufacturing Company and other defendants: 3

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
representing the United States of America.
HERBERT NOBLE, Esq.,
MARSHALL A. CHRISTY, Esq., and
HARTWELL P. HEATH, Esq.,
representing the Standard Sanitary Manufacturing Company, and others. 4

HOMER F. STALEY, a witness produced on behalf of the Standard Sanitary Mfg. Co., *et al.*, after having first been duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY MR. CHRISTY:

Q. Please state your age, residence and occupation.
A. My age is thirty-two; residence, Columbus, Ohio; oc-

1 cupation, assistant professor of ceramic engineering at the Ohio State University.

Q. Will you please state where you were educated, and outline your experience since the date of your graduation, with particular reference to the manufacture of sanitary enameled ware?

A. I graduated from the Ohio State University, receiving the degree of B. A., and took in addition—

Mr. GROSVENOR: When did you take the B. A.?

A. In 1905. During the school year of 1904 and 1905 I
2 was also taking a large amount of ceramic engineering work, and took also another school year of ceramic engineering work—I beg your pardon, as I will have to correct a statement there. I graduated in 1904, and that first school year that I mentioned of 1904 and 1905 should be the school year of 1903 and 1904. Then I took another school year's work in 1904 and 1905, entirely devoted to ceramic engineering.

My work in the ceramic engineering department covered all the ceramics taught in the university at that time. On July 1, 1905, I went to work for the McCrum-Howell Company—that should be the Kellogg-McCrum-Howell Co., as it
3 was at that time, manufacturers of enameled iron ware at Blairsville, Pa. My position at that time was that of chemist. In the fall of 1905 the plant at Blairsville burned down and the factory was removed to Uniontown, Pa. The new factory started into operation in the fall of 1906; in the spring of 1907 I was made superintendent of the plant and continued in that capacity until July, 1909. During the summer of 1909 I took a post-graduate course, or post-graduate work in chemistry at the Columbia University, New York City, and took up my work as assistant professor of ceramic engineering at Ohio State University in September, 1909.

4 During the summer of 1910 I was employed as consulting expert in the manufacture of enameled iron ware by the Humphryes Manufacturing Co. at Mansfield, Ohio. Since September of 1910 I have been retained as consulting expert in the manufacture of enameled iron ware by the D. A. Ebinger Sanitary Mfg. Co. at Columbus, Ohio. My connection with this firm still continues. I have also done work of smaller quantity as consulting engineer for other enameling plants. I am a full member of the American Ceramic Society, and have contributed the following papers to their proceedings

bearing on the question of enameling: first, the manufacture of sanitary enameled iron ware in volume 8; second, the compounding of frits—that is what the melted glass is called in the enamel—volume 10; third, the contraction of glasses in glazes on cooling as a cause of crazing, volume 12; fourth, the calculation of ceramic mixtures, volume 13; fifth, the cause and control of modelling in sheet steel enamels, volume 13.

Q. You did not give the proceedings.

THE WITNESS: Well, they are all in the transactions of the American Ceramic Society. These papers have been extensively re-printed and commented upon, not only in this country, but in England and on the continent of Europe.

Q. When you first went into the employ of the Kellogg-McCrum-Howell Co. at Blairsville, did you become familiar with the method of enameling used there at that time?

A. I did.

Q. Subsequently, at Uniontown after you became superintendent, and in your work in connection with this company at Columbus, did you also familiarize yourself with factory operations and conditions in enameled iron ware?

A. Yes, sir, I am entirely familiar with the methods used.

Q. How active is your work at the present time in connection with the company at Columbus?

A. The company at Columbus built a plant and had a man engaged to make their enamel and take charge of the application of the same, but after operating for three months under his direction they found that he was totally incapable, and made a contract with me to spend such time at their plant as I could take from my work at the university and direct the alteration of their plant and equipment, and the making of the enamel. My contract with them simply states that I shall see that their method of manufacture is carried on in a successful manner, whether it takes a large amount of time or a small amount of time.

The general course of procedure is that I go out there for two to four hours a day two or three times a week and give directions and see how things are coming on.

Q. At the time that you first went to Blairsville, what method was employed of applying the enamel to the ware?

A. In the main the ware was made by the hand method. They were experimenting on one tub furnace with the use of a pneumatic dredger.

Q. Please state in a general way how this hand method of enameling was practised?

A. In the use of small dredges, such as we use for applying the rims to tubs and making small ware, the dredge consisting of a sieve with a wooden handle which was held in one hand by the operator and agitated by means of a cracker —a simple steel hook,—held in the other hand of the operator.

Mr. GROSVENOR: You are now talking in reference to the small rim dredge?

A. In reference to the dredge used for small ware and rims. In the case of the large dredge for tubs the equipment method of procedure was the same except that the dredge was larger and was counterpoised by the means of a rope and weight, the rope being slung over a pulley.

Q. In the period from the time that the Blairsville plant was destroyed until the new plant was started in Uniontown, what were your duties?

A. The McCrum-Howell Co. fitted up an experimental laboratory at the radiator plant of this firm at Uniontown, Pa., and in this laboratory I carried on experimental work relating to various questions in the manufacture of radiators, and also carried on an extensive series of experiments relating to the manufacture of enameled iron.

Q. When the plant started up at Uniontown, what method of enameling was employed?

A. At first the hand method was employed.

Q. Just the same as at Blairsville?

A. Yes. The reason for using the hand method was at the time we began operating there we had not yet installed the necessary piping and equipment for using the pneumatic dredger.

Q. How long did the hand method continue in use there?

A. About three months.

Mr. NOBLE: What year was that?

A. That was in the fall and winter of 1906.

Mr. CHRISTY: And then what was done?

A. As soon as the necessary piping and fittings were installed the change was made to the use of pneumatic dredgers similar to those described under the Arrott patent. 1

Q. You mean the Arrott patent which has been referred to in this case? A. I do.

Q. Do you know whether the company had the right to use this pneumatic dredger at this time, and state the facts generally connected with its use?

A. I do not know whether they had the right or not, but they decided to use them and we used them continuously up to the time that I left the employ of the company, and I have information that they are still using them, and have been continuously from the time they started. 2

Mr. GROSVENOR: I object to that on the ground of hearsay and move that it be stricken from the record.

BY Mr. CHRISTY:

Q. Did the company try to use any other form than the pneumatic dredger, and with what success, if you know?

A. In the spring of 1908 the officials of the company informed me that we could no longer use the pneumatic dredger—

Mr. GROSVENOR: I object to that as hearsay. 3

THE WITNESS: —and must find some other means, or method, of applying the material; consequently, we started a long series of experiments trying to devise some other means or method of applying the enamel in equally as good a manner as the pneumatic dredger.

Q. Did those experiments succeed?

A. No, sir, they did not; we made several devices; Mr. Hamlin, head of the manufacturing department of the McCrum-Howell Co. gave me several suggestions, made several trips to Uniontown in regard to this matter. We built three or four different devices, but were unable to find anything to give, approximately, the results obtained by the pneumatic dredger. 4

Q. And you continued to use the pneumatic dredger commercially?

A. We continued to use the pneumatic dredger commercially because we could find nothing better, or find anything that would give results approximately as good.

1 Q. In your experience—first, in your observation of operations with the old hand dredge, and second in your observation of operations with the pneumatic dredger, did you find the latter to be advantageous or otherwise?

A. I found it to be decidedly advantageous.

Q. State generally in what respects.

A. It gave better ware at less cost.

Q. First as to the matter of cost, will you state wherein its advantages lay?

A. In the first place it used less enamel; in the second place, in the case of tubs, it was possible to make a piece of
2 ware with two men instead of three after installing auxiliary aids to manufacture, which could not be used advantageously without the use of this mechanical agitator or some equivalent device; in the third place, a piece of ware could be made in less time. This meant a saving in fuel, a saving in labor, a saving in plant, and a saving—

Mr. GROSVENOR: What do you mean by a saving in plant?

A. That you didn't have to have such a large plant and did not have to have so much money invested. It also meant
3 a final saving in the cost of superintendence.

In the fourth place, the ware could be made with less exertion. This meant a saving in labor, therefore a saving in wages and a saving in cost of maintaining the output of the plant; in the fifth place, the wear could be made by less skilled labor. This meant a saving in wages and a saving in cost of maintaining the output of the plant. May I speak without it being taken down by the stenographer?

Mr. GROSVENOR: I object to your so doing.

Mr. CHRISTY: Whatever you say goes on the record.

THE WITNESS: Then I am ready for the next ques-
4 tion.

Q. Taking up these various points which you have enumerated, you say in the first place that in the use of the pneumatic dredger there was a saving in enamel. Please state how this saving came about, and, in a general way, if you recall, about what it amounted to?

A. By the use of the pneumatic dredger the enamel could be applied more uniformly, therefore a piece of ware could be

adequately covered with the use of less enamel; the saving in enamel on a tub was approximately five pounds. 1

Q. What did that amount to in the matter of percentage?

A. It would amount to 20 per cent. of the amount that was formerly used with the hand dredge. That is, we figure it takes 25 lbs. of enamel with the old method and 20 lbs. with the use of the pneumatic dredger. The corresponding saving in smaller ware was about in the same proportion, although a little bit harder to keep track of on account of the diversity of shapes in small ware.

Q. You next said you were able to use a smaller crew on the tubs than before, just how much smaller would that be? 2

A. At Blairsville, with the use of hand dredges, we employed three men on a crew making tubs; at Uniontown we employed two.

Q. You said that this saving was in a measure brought about by auxiliary aids which could not have been advantageously used without the pneumatic dredger. Just what were these other aids and how did the pneumatic dredger render their use advantageous?

A. The other aids were the use of mechanical appliances for opening the furnace doors, operating the table and the use of a powder dummy, or supply box for feeding the enamel into the large dredge used in making the tub. 3

Q. Explain why these appliances could not have been advantageously used with the old hand dredge?

A. The labor involved in making a tub by the old hand dredge was so strenuous, such a strain upon the operator, that he could not have worked any faster than he did work having these appliances, but since the labor of the use of the pneumatic dredger was less he was able to work at a faster rate by the use of these appliances.

Q. Your next saving you found in the matter of time. How material was that? 4

A. About 25 per cent. of the time necessary to make a piece of ware by the hand method, which would amount to about 33-1/3 per cent. of the time to make it by the method using the pneumatic dredger.

Q. Under this head you spoke of the saving in plant. Explain a little more fully what you mean by that and include also the saving in superintendence, which you also mentioned?

A. If it would take an enameling plant containing six furnaces to make one hundred tubs by hand process one day, the same number of tubs could be made in the same time with the use of the pneumatic dredger and these auxiliary appliances in four furnaces. This would mean a saving of 25 per cent.—no, it would mean a saving of 33-1/3 per cent. in the cost of the plant. In the cost of superintendence, if it took—

Mr. GROSVENOR: I object to those statements of "ifs." It seems to me that those statements should be based on the observation at Blairsville, because it has certainly no relevency in arguing from "ifs." I would suggest that you change the form of the answer.

THE WITNESS: I see. To change that I might say that there is a saving of 33-1/3 per cent. in the cost of plant, because with the hand method we found—I beg your pardon—with the pneumatic dredger we found we could make the same number of pieces of ware on two furnaces that we were making with the hand method on three furnaces. That is a direct statement of the observation containing no hypothesis.

In the matter of the cost of superintendence with the hand method, there would be twenty-seven men employed on three furnaces in one day when the weather was cool; when the weather was warm we often found it necessary to employ thirty-three men to work on three furnaces in one day; with the use of the pneumatic dredger, at all times of the year, we employed twelve men.

Mr. GROSVENOR: On three furnaces?

THE WITNESS: No, I meant to say eighteen men, I beg your pardon, on three furnaces; six men to a furnace for a day's work. The cost of superintending the larger amount of men was an appreciable item.

BY Mr. CHRISTY:

Q. You say you employed eighteen men on three furnaces, what did the other men, outside of the two, whom you have previously mentioned, on each furnace have to do?

A. It took three men on each furnace per day by the hand method to turn the table and open the door. The additional number of men employed during the warm weather

was due to the fact that owing to the exertion necessary to make ware by the old hand method, we employed four crews of tub body enamelers and rim enamelers, instead of three crews. The number of table turners remained the same. 1

Q. Well, just to make the record clear, take a single furnace per turn under the hand method, and state how many men were employed and what each did.

A. Under the hand method there were three men employed, one man being variously designated as "first man," or "inside man," or "body enameler," who applied the enamel to the inside surfaces of the tub; the second man, variously designated as "second man," or "rim dredger," who applied the enamel to the rim of the tub. The third man operated the table by means of a crank and levers and opened and shut the door of the furnace. 2

Q. Now, coming to the pneumatic dredger, how many men were employed on a single furnace on one turn, and what did each do?

A. In making tubs there were two men employed, one applied the enamel to the inside surfaces of the tub, the other man applied the enamel to the rim of the tub. The two men together put the tub into the furnace and removed it from the furnace, and the opening of the door and operation of the table were done by mechanical means, mechanical means being actuated by the feet of the two operators. 3

Q. Now, you have mentioned, among other savings, the saving in trouble and expense of maintaining output, what did you have in mind there?

A. By the old method the exertion of making a tub, not only the increased exertion while the man was actually laboring, but the man has to labor for a longer time. This means that it took a man of considerable physical endurance, and considerable grit to stand the work, especially in hot weather; owing to the fact that this class of men is rather small, we had to employ men who would not always work steadily, men who would lay off a considerable amount of the time and who could especially not be counted on during the summer, and for this reason we found it necessary to keep at our plant one or two men who were familiar with the art of enameling and employ them at various odd jobs about the plant, paying them more than the labor they were doing was worth. 4

In addition to that, in order to get our men out and keep

1 them at work it was necessary to have a superintendent of a good deal of push and ability, and it was necessary to give him a larger number of foremen than was needed by the hand method.

MR. GROSVENOR: You mean by the automatic method.

THE WITNESS: Yes, by the automatic method, thank you.

At Blairsville we had, in addition to the superintendent of the plant, a day foreman and a night foreman in our enameling room. At Uniontown, when I
2 was acting as superintendent I was able to turn out a larger production without a foreman either by day or by night. The actual saving in salaries, as I remember it, by doing without these two foremen was $180 a month.

Q. And do I understand that this last saving that you have mentioned was directly due to the substitution of the pneumatic dredger for the hand dredge?

A. It was, counting the fact that these auxiliary aids could be used with the pneumatic dredge and could not be
3 used with the hand dredge.

Q. With the pneumatic dredge, were the tubs of the same weight as those made by the hand dredge, that is comparing tubs of the same general quality?

A. The tubs made at Uniontown were considerably lighter after we got our foundry to the point where we could make a tub of the weight we wished to make it. When we first started to operate there, owing to difficulties in our foundry practice, we were not able to make tubs as light as we wished to, but when we got to the point when we could make a tub the weight we wished to make it we were able to make a
4 lighter tub with the pneumatic process than we were able to make with the hand process.

Q. Why was that?

A. It wasn't necessary for the tub to remain hot so long, since the enamel was applied more rapidly and in a thinner coat.

Q. In your experience, what was the disposition of the men as regarded the pneumatic dredger,—did they take to it or did they object to it?

A. There was some prediction among the men while we

were installing the pneumatic dredger, that the method of 1
installation we were employing, and the kind of equipment we were employing for its use, would not be satisfactory simply because it was different from what the men had seen at other plants, but several of our men had worked at other plants where the pneumatic dredger was used and they had asked us to put it in. After the first week or ten days the men were very much pleased with the pneumatic dredger and with the way in which we had fitted up our enameling room, and would have objected very strenuously to its discontinuance.

Q. Were there any occasions when a pneumatic dredger 2
ever broke down for any reason, and if so, what was done?

A. If a pneumatic dredger broke down the man would quit work and remain idle, his pay stopping until the dredger was in proper shape again.

Q. On such occasions had you hand dredges available?

A. We had. The only time that a man would use a hand dredge was when he had a tub practically completed and simply needed a slight application of enamel with the hand dredge to complete the making of the tub. The same held true of our small ware; our small ware men would not work with the hand dredge. I have seen times when a man, or 3
crew of men, had spent probably fifteen minutes working on a tub and had already applied one coat of enamel and something would happen to their pneumatic dredger, they would go and sit down rather than complete making the tub with the hand dredge.

Q. And lose pay for the tub?

A. Yes, and not only that, they would get a calling down for having us lose the tub, or having the company lose the tub.

Mr. GROSVENOR: What do you mean by saying that they would get a calling down, from the foreman? 4

A. From the superintendent. I, as superintendent, would give the men a scolding for not completing the tub with the hand dredge. They had instructions that if the pneumatic dredger did not work they were to complete the piece with the hand dredge, and if they didn't do that they would be considered at fault.

Mr. CHRISTY: And you could not make them do it?

A. No, sir.

1 Q. Now, coming to the quality of the wear. You say not only the cost was less with the pneumatic dredger, but the quality was better, in what respect was it better?

Mr. GROSVENOR: Did he say the quality was better?

THE WITNESS: I said better quality, if I remember rightly.

Mr. GROSVENOR: At less cost?

Mr. CHRISTY: Yes.

THE WITNESS: The quality is better, first, as to defects which are apparent to the naked eye. These consist of rolls, beads, blue spots, blisters and pin
2 holes and fine crazes. The rolls, of course, were due to the fact that after the enamel is put on, and if the enamel is applied in an uneven manner, as it is by the hand method of application, it is liable to fall down and cause heavy spots of enamel which will make a roll; and in addition to that the enamel must be heated until there is appreciable flow in order to obtain approximate smoothness in the coat when it is applied by the hand method. In trying to cause this flow the workman is liable to cause a roll to be formed, the flow being too great in some spot, especially on the
3 vertical surfaces.

Beads are due to the fact that in heating a piece of ware so as to obtain a flow the enamel runs off the edges of the ware, which must then be trimmed or cut by the use of a knife. In addition to this, the enamel is very liable to be pushed up into sorts of beads around the edge of the piece. The fact that the enamel is applied in a thin uniform coat by the pneumatic dredger makes it unnecessary to have any large amount of flow, so there is a great deal less trimming necessary, and, consequently fewer beads. The larger
4 prevalence of pin holes and blisters in ware made by the hand process is due to the fact that the enamel cannot be applied in an even manner and a blister, or pin hole, is liable to form wherever there is a thick spot of enamel. The fact that the enamel cannot be applied so rapidly also makes it more likely that pin holes or blisters shall form, because it makes it harder to get the enamel on to the iron when the iron is in a proper state of heat for enameling.

The crazing is more liable to occur in enamel which had been applied by the hand method, due to the fact that the coat is of non-uniform thickness, which sets up strains in cooling and also to the fact that since the enamel cannot be applied as rapidly as in the other process the iron may not be in a proper state of heat for receiving the enamel when it is applied. 1

Mr. GROSVENOR: You did not define what a craze is.

A. A craze is a fine crack.

Q. Or wrinkle?

A. No, a roll is a wrinkle. 2

Q. You haven't told us about the blue spots?

A. The blue spots, of course, are due to the fact that with the hand method of application it is not possible to apply the enamel in as uniform a manner as with the other process, and so some spots are liable not to be sufficiently covered. Iron showing through enamel makes a blue spot.

Now, in addition to these defects which are apparent to the naked eye, there are other defects in a tub which are not apparent to the naked eye, and these other defects are especially liable to be in tubs which are made by the hand process. A tub made by the hand process has to be heated "harder" in order to produce a smooth tub. 3

Mr. GROSVENOR: Harder or hotter?

A. As the enameler says: "I heat my tub *harder*." Now, to heat a tub harder you may either heat it to a high temperature for the same length of time, or heat it at a lower temperature for a longer length of time. In either case you are heating your tub "harder," as the enameler says. Put quotations around the word *"harder."* It is a technical term used in the enameling business. This "harder" heating may destroy the bond between the enamel and the iron which renders it less resistant against shocks and jars, or it might make the enamel more brittle. That is, a piece of enamel ware which has been heated "hard" is more liable to crack and peel off on provocation of a blow or jar than one which has not been heated so hard; and another point is that by the pneumatic dredger the enamel being applied in a thinner coat, it is for this very reason more resistant to shocks and jars and more liable to give a 4

1 pieces of ware free of crazes. There are strains set up while a piece of enamel ware is cooling down. These strains are due to the fact that the enamel and the iron both contract as the tub cools down and they contract at different rates, which causes the strain that I speak of. If the enamel is thick the strains between the—or rather the strains caused by the different rates of contraction may be strong enough to hold the enamel free from the iron, causing a craze. An exaggerated case would be in the case of a severe blow given to a piece of ware. An enamel is a glass, and in very thin sections glass is elastic; the thicker it becomes the less elas-
2 tic it is. Fine threads of glass can be woven into cloth, while plate glass is not appreciably elastic. It is for this reason that practically all enamelers claim that a thin coat is liable to craze or to peel off than a thicker coat of enamel.

In addition to the fact, or probably consequent upon the fact that you have less liability of the presence of these various defects when manufacturing by the use of the pneumatic dredger, the percentage amount of seconds is smaller compared with the percentage amount of first-grade ware, and the percentage amount of unsalable ware is materially decreased, and owing to the fact that these various defects
3 are, however, liable to result in a rejection of the ware by the customer, or in the ware becoming unusable after it had been put into use, the amount of returned ware is a great deal less and the number of unsatisfied customers is a great deal less.

The returned ware item is more serious than a person not familiar with the business might think, because the manufacturer has to pay the freight both ways, and when the ware is returned it is seldom properly packed, and in four cases out of five has to be scrapped after it is received at the factory. That is, if you send a man a piece of ware which
4 has a slight defect in it and he happens to reject it, when it comes back to you you do not have a piece of ware with a slight defect, but you are almost sure to have a piece of scrap ware. That is all I have to say as regards to the quality of the ware unless you have some further questions.

Q. Your answer suggests one question: where you speak of the evil effects of harder heating under the old hand method, what you mean is heating of the ware after at least one coat of enamel has been applied to it, is that correct?

A. That is correct.

Q. In your experience, did you find that the quality of the enamel itself was rendered capable of improvement by the adoption of the pneumatic dredger, and if so, in what respect? 1

A. I did. Owing to the fact that the pneumatic dredger allows the enamel to be applied in a smooth coat, and it is not necessary to have any appreciable flow in the enamel on heating, it is possible, keeping the rest of the composition the same, to raise the amount of silica and alumina in the composition. C2 and A1 203 is the way it is used. These elements being the ones which make the enamel less liable to flow, inasmuch as the silica and the alumina are higher, or were higher, the enamel was more resistant to the attack of chemical agencies, either atmospherically or artifically applied, and the glaze was harder and less sensitive to wear. 2

Q. Does this result in a better article commercially?

A. It does, being less sensitive to wear and less sensitive to the attack of chemical agencies.

Q. What have you to say in the light of your experience as to the possibility of making what are considered commercially enameled iron articles of the present day by the old hand process of enameling?

A. It is possible to make a salable piece of ware by the hand process, but it cannot be done without more care, trouble, and without the employment of more skilled men than are used by the pneumatic dredger; that is, I think it possible, but I do not think it probable that it could be employed successfully, other things being equal in the process of the manufacturing, costs, etc.

Q. Could the hand process, in your opinion, based on your own experience and knowledge of the business, be employed to produce commercial articles at the present day to a sufficient average amount to be economical?

A. No, sir. I would wish to qualify that statement and say that my remark referred to enameled iron sanitary ware. If you were making very small pieces as specialties, or, for instance, for use in parts of electrical apparatus, it might be possible to use the hand dredge, but if you are not making such pieces and are making large pieces, it would not be possible; by large pieces I mean a piece as large as the ordinary size lavatory, or larger. 4

Q. You have pointed out various respects in which the use of the pneumatic dredger is highly advantageous as com-

1 pared with the use of the hand dredge. Do you consider the pneumatic dredger, in default of anything equally effective, to be essential for the production of modern enamel ware on a commercial scale?

A. I do. I would not attempt to build a plant unless I could use this dredger, or something equally as good, and I know of nothing that can be obtained at the present time that would give approximately the results that can be obtained by the use of this dredger.

In this connection I might say that while I was at the Humphryes Mfg. Co. in the summer of 1910, they were using
2 an apparatus which they had built at considerable expense to take the place of this pneumatic dredger; it was an electrical device. At one time we, or rather the company, had a large amount of ware to get out in a stated time, and Mr. Carpenter, Mr. D. A. Carpenter, General Manager, asked me what could be done to facilitate the speed in getting out this ware. I told him—

Mr. GROSVENOR: I object to this as pure hearsay and incompetent.

THE WITNESS: I beg your pardon.

Mr. CHRISTY: Mr. Staley, do not argue with Mr.
3 Grosvenor.

THE WITNESS: I told Mr. Carpenter that the best thing we could do would be to discontinue the use of the electrical dredger which was being used at night, and to use the pneumatic dredger. We did so, and there was a marked increase in the production simply due to that change.

Mr. GROSVENOR: When was that?

A. In the summer of 1910, while I was at the Humphryes Manufacturing Co. at Mansfield, Ohio. I was the man that
4 made the change and the man that saw the results.

At this point, 1 o'clock P. M., the hearing was adjourned for recess until 2:30 P. M.

After Recess.

HOMER F. STALEY (resumed):

DIRECT EXAMINATION BY Mr. CHRISTY (continued):

Q. You have said that you wished to make one correction in your testimony in connection with some illustrative statement which you made as to the quantity of tubs made in six furnaces in a day?

A. Yes, sir. I said in my former testimony that we could make one hundred tubs in six furnaces in a day by the hand method, and that we could make the same number of tubs in four furnaces by the use of the automatic dredger and auxiliary aids to manufacture. That should have been two hundred tubs in six furnaces by the hand method per day and we could make the same number of tubs in four furnaces per day by the use of the automatic dredger.

Q. That means a day of twenty-four hours, does it not?

A. It does.

Q. And how many turns? A. Three turns.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Will you define ceramic engineering?

A. Ceramic engineering is that branch of engineering which deals with silicate products. It embraces the manufacture of clay wares and their decoration, the manufacture of cement, the manufacture of glass and all the auxiliary kinds of manufacturing which deal with glasses and clay products.

Q. Now, by the study of the manufacture of glass, you mean the study of the components, or ingredients, which enter into the making or the manufacturing of the glass, is that correct?

A. Yes, for instance, in a course of glass making we deal with the winning and manufacture of the ingredients, the proportions to which those ingredients should be blended in order to make glass of various qualities, and also the mechanical processes of melting and working of the glass. The same would apply to clay products.

Q. Was the factory at Blairsville to which you went in 1905 the first factory of sanitary enameled iron ware which you had inspected?

A. Yes, that was the first—no, it was not. I had visited

1 a small factory which made some kinds of sanitary enameled ware at Columbus, Ohio.

Q. What is the name of that factory?

A. The Ohio Penitentiary.

Q. Did they make bath tubs?

A. They did not make bath tubs; they made sinks; I believe sinks was the only thing they made in a sanitary line.

Q. When you went to Blairsville, that company was just starting in the manufacture of sanitary enameled iron ware, was it not?

A. No, it was not. The plant had been there for some
2 six or eight years. The Kellogg-McCrum-Howell Co. had had control of the plant for something like two years. I am not absolutely sure as to the exact length of time, but it was something like a couple of years.

Q. In what capacity did you start with them?

A. I went there with the title of chemist. The formula that they were using was turned over to me and I took charge, first of the making of the enamel, directing how ingredients should be used and how it should be melted and how it should be ground, etc. While at first I did not have direct charge of the men in the enameling room, yet the foreman
3 was instructed to follow my directions or any suggestions I should give him as to the way in which the enamel should be applied.

Q. Then the experience and knowledge which you had gained in the study of ceramics was used when you first went there in the making of the enameling powder, is that right?

A. Yes.

Q. You were the scientific man of the establishment?

A. I was called that.

Q. And you were turned to the making of the powder?

A. Yes.

4 Q. Were you directed to make the slush? A. Yes.

Q. Did you have any duties in connection with the selection of the pig iron?

A. The pig iron at the Blairsville plant had already been bought when I was there. I was consulted as to how it should be blended and put into the cupola.

Q. What was it blended with?

A. The various brands of pig iron were blended in various proportions in order to produce an iron of given quality.

Q. And that you had charge of?

A. I was simply consulted in that respect. The foundry foreman had direct charge as to the weighing and so on, but I advised with him, and I advised him as to what proportion to use the various iron. 1

Q. You mean you gave him instructions as to the ingredients going into the iron?

A. Yes. What I have been telling you now applied only to the practice at Blairsville, and the plant only operated there for a few months; at Uniontown the conditions were different and my duties were different.

Q. When you went to Blairsville, did you make changes in the proportion in the various kinds of pig iron? A. Yes. 2

Q. You were not satisfied with the mixture of the different kinds of pig iron, were you?

A. No, sir, I was not satisfied with it; I changed the pig iron.

Q. Now, take the slush. Were you satisfied with the slush coat they were making when you went there?

A. No, sir, I was not.

Q. And you changed that? A. I changed that.

Q. And were you satisfied with the enameling powder which they used? A. No, sir.

Q. I beg your pardon. A. No, sir, I was not. 3

Q. And you changed that? A. I changed that.

Q. And in making the changes in these three things, the quality of the pig iron, the ingredients of the slush and the enameling powder, you used this knowledge, and brought to bear this knowledge and experience which you had gained in the study of ceramics at Columbia and the Ohio State University?

A. Yes. I had not been to Columbia University at that time.

Q. But you used the knowledge which you had gained from previous study? A. Yes. 4

Q. Did you consider these changes material?

A. Yes, sir, the changes were material.

Q. They brought better results?

A. They brought better results. The main thing gained in the change in the composition of the enamel was a reduction of cost per pound for the melted enamel. I am not ready to say that the enamel was a better enamel or worked any better, but it cost less per pound, and that was my object in changing it.

1 Q. As I understand it, in the manufacture of this sanitary enameled iron ware, it is necessary to have a slush coat and an enamel powder and iron, that is cast iron, which are harmonious. I mean by that that the relative components of each of these articles must be studied, and the proper formulas observed, is that right?

A. As to the composition of the iron itself, I would say that the composition of the iron could vary within very wide limits.

A. Of the what? A. The iron itself.

Q. Of the cast iron or the pig iron?

2 A. Of the pig iron. The composition of your cast iron could vary within very wide limits and still be suitable for making good enameled iron ware. I believe that there has been a great deal of trouble blamed on the composition of the iron simply because the man who is making the enamel and who sees to the application of the enamel was not able to do his part of the work properly, and whenever he would get in a hole, or get to the point where he could not correct the trouble in any way, he would simply blame it on the cast iron.

The reason I changed the composition of the iron was 3 not so much for the sake of getting a better iron for enameling but for the sake of reducing the cost of our cast iron, and for the sake of getting better castings in the foundry.

Q. What do you mean by "getting better castings in the foundry?

A. I mean castings with fewer blow holes, fewer slag spots and fewer cold shots or misrun castings. In fact I did not pay any particular attention as to whether a certain mixture, or their mixing, would enamel up well or not. I would consider whether it would cast well.

Q. That is the pig iron? A. Yes.

4 Q. How about the enamel powder?

A. It has to be kept under control, rather accurate control, or you could not make good enamel work with it by any process.

Q. Then it is important to have a proper sort of enameling powder, is it not? A. It is.

Q. What are some of the ingredients that go in the enameling powder? A. It is a long list, something like twenty.

Q. Give us as many as you can recall.

A. Feldspar; flint; sand; borax; borax acid; soda ash; 1
sodium nitrate; pearl ash; potassium nitrate; oxide of lead, which may be used in several forms; there are several oxides of lead, any one of which may be used; oxide of zinc; barium carbonate; calcium carbonate; calcium fluride; barium fluride; cryolite; sodium fluride; oxide of tin; bone ash; oxide of antimony; sodium antimony; oxide of arsenic; sodium arsenate. I believe that is all I can think of just at present.

Q. Now, of the components of the slush coat, can you mention some of the ingredients of that?

A. All of the ingredients that I have mentioned there may be used in the slush coat with the exception of bone ash 2
and oxide of tin. I never heard of a slush coat containing either one of those ingredients; any of the others may be used.

In addition to that, a slush coat may contain clay, oxide of cobalt, oxide of copper; oxide of nickel and oxide of various other metals; oxide of manganese is sometimes used. A slight amount of oxide of manganese may be used in the cover coat, which is the enamel itself.

Q. Do you consider the making of the slush an important step in the making of the enamel ware? A. Yes, sir.

Q. That is one of the most important, isn't it? 3

A. The making of the slush coat is important; the application and burning of the slush coat is really more important.

Q. Do you apply your slush coat in a liquid form?

A. Yes.

Q. By brush?

A. I have applied it both by brush and by pouring it.

Q. In order that the enamel powder may fuse properly it is essential that there be a proper form of slush coat, is it not? A. Yes.

Q. And that the slush be fired and applied properly? 4

A. Yes.

Q. Why is that so important?

A. If the slush coat is not of the right composition it will not have a long heat range, that is the range of temperature between the point at which it melts into a glass fluid enough to adhere to the iron, and at which there is sufficient volatilization due to heat from the slush coat in order to cause it to burn to a crisp, and as is said in enameling practice, "not

1 long enough," so we must have a slush coat of long heat range.

Of course, if it is not applied properly, if it is applied thick in some places and allowed to run down and cover thickly in some spots and run off the casting in other spots and become exceedingly thin, why, it is liable to burn up on the thin spots and not be sufficiently cooked down on the heavy spots to form sufficient bond with the iron. If the slush coat is not adapted in its heat range to the heat range of the enamel the slush coat may burn up under the enamel after the enamel is applied.

2 Q. What do you mean by "heat range?"

A. I tried to define that a while ago. I mean by heat range the range of temperature between the point at which the slush coat becomes fluid enough to adhere to the iron, and the point in temperature at which there is enough volatilization from the slush coat, due to heat, to cause it to burn to a crisp, or to start to burn to a crisp, especially on thin spots.

Q. Now, you say that it is necessary that the heat range of the slush and the heat range of the enamel powder correspond, that is be the same?

3 A. No, not the same. The slush coat must melt to lower limits of the heat range, and the slush coat must be also within the lower limit of the heat range of the enamel powder. That is, the slush should start to melt before the tub is fully red, because as the tub becomes red, oxidation sets in very rapidly in the iron and the slush coat must melt and cover up the iron to prevent the iron from oxidizing while the tub is being heated up to the proper temperature for making the tub. But the slush coat must also have an upper limit of heat range, which is higher than the upper limit of temperature at which the covering enamel will be heated, so 4 that the slush coat won't burn up under the enamel while you are trying to cook your enamel down.

Q. Is the formula for the making of your slush coat one of the secrets of the business? A. It is.

Q. How about the formula for making the enamel powder?

A. Those are secrets, too. There is no literature that I know of, that is no reliable formulas for making either a ground coat or slush coat.

Q. A ground or slush coat, what is the difference?

A. I mean in making the ground or slush coat, which means the same thing, or cover coats. 1

Q. That is the enameling powder? A. Yes.

Q. There have been no text books written on those subjects?

A. No, sir, there have been no text books written on those subjects. My own publications, of which I gave you a list, probably contain more relating to the manufacture of enameled cast iron as practised in this country than any other, and unfortunately the one paper which contains some compositions for cover coats and ground coats is now in the hands of the printer—that is volume 13 in the transactions of the American Ceramic Society—and therefore not available. 2

Q. The fact is, then, that this study which you have given the enameled ware has been in the main, if not entirely, devoted to the consideration of what elements should go into the making of the slush coat, and into the making of the cover coat, which is the enameling powder, is that correct?

A. No, sir.

Q. What requires special attention?

A. The application of the ground coat, heating the ground coat, the application and heating of the enamel itself. 3

While at Blairsville I did not have direct charge of the men in the enameling room; at Uniontown I was put in charge of the enameling room as soon as they started operations and had direct charge of the men and the applications.

Q. Well, I am coming to Uniontown later. Other than these factories that you have mentioned, Blairsville which burned down, Uniontown factory of the McCrum-Howell Co. and this factory at Columbus, have you visited any of the large factories throughout the country?

A. Yes, I have. As I said this morning, I was employed in the Humphryes Mfg. Co. 4

Q. In the summer of 1910? A. Yes.

Q. That is a small factory, isn't it?

A. It has a five furnace plant.

Q. Have you ever been over the J. M. Kohler Sons Company's factory at Sheboygan, Wis.? A. I never have.

Q. Or the Iron City Sanitary Mfg. Co., Zelienople, Pa.

A. I never have; I have visited several other plants; I have visited Mott's plant at Trenton, New Jersey.

1 Q. When did you go over that?

A. I went there while I was attending a meeting of the American Ceramic Society at Trenton, N. J., during the month of February.

Q. This year?

A. This year, and I also visited the Colwell Lead Company's plant at Elizabeth, N. J.

Q. This year? A. This year?

Q. Have you been over any other factories?

A. I have visited the Allegheny factory of the Standard Sanitary Mfg. Co.

2 Q. When did you go over that? A. In February.

Q. This year?

A. This year, and also the plant of the United States Sanitary Mfg. Co. at Monaca, Pa.

Q. This year? A. This year.

Q. And these visits to these different factories were all made during the month of February?

A. Yes; I have also visited during the month of February of this year, the plant of the Blairsville Enameled Iron Sanitary Mfg. Co., at Blairsville, Pa.

Q. Was that this year?

3 A. During the month of February, this year.

Q. At the time that you visited these several plants, did you expect to be a witness in this suit? A. I did.

Q. Who suggested that you be a witness?

A. I do not know which one it was; it was one of the attorneys for the defense. They suggested that I visit some of these plants, and did not know that I expected to visit others. I visited the plant of the Blairsville Enameled Iron Mfg. Co., I believe it is called, at the invitation of Mr. Cook, president of the company.

Q. When was that? A. In February.

4 Q. This year? A. Yes.

Q. How did you happen to be a witness in this suit? Did you go to the attorneys for the defense and offer your assistance, or did they hear of you and send for you?

A. They heard of me and sent for me.

Q. That was when?

A. I do not remember exactly; it was during this past winter some time.

Q. Since December? A. I am not sure.

Q. Then you went to these other factories after that, is that correct? A. It is. 1

Q. Now, other than the use of the hand dredge, in respect to which you testified this morning, at Blairsville and at Uniontown, have you seen the hand dredge in operation at any of the other factories? A. I have.

Q. Where?

A. I have seen the hand dredge in use for making quite small pieces of ware which were of intricate shape, at Mansfield, Ohio, at the plant of the Humphryes Mfg. Co., and at the plant of D. A. Ebinger at Columbus, Ohio—the D. A. Ebinger Sanitary Mfg. Co., at Columbus, Ohio—but in 2 neither of these plants is the hand dredge used, or was it used, for making large pieces of ware, except for some reason or other when the pneumatic dredger was not available.

Q. Your experience then in the use of the hand dredge is confined to the instances you have mentioned?

A. Let's see, there is Blairsville, Uniontown, Mansfield and Columbus. I believe it is.

Q. Did you see the hand dredge in operation on any ware at the Blairsville Iron Enameling Company, or rather the Blairsville Enameled Iron Company?

A. No, sir, they are not using the hand dredge. 3

Q. What are they using? A. The pneumatic dredger.

A. The Arrott dredger? A. A modification of it.

Q. What are they using at the Mott works?

A. A modification of the Arrott patent. It is a system worked up by Mr. Ditheridge, I believe.

Q. At the Allegheny works what were they using?

A. They were using the Arrott dredger, and also at Monaca.

Q. Have you had any experience in the selling end of the business?

A. If you mean by selling, going out and selling the 4 wares, no. At Uniontown I had charge of the shipping, that is through a foreman; I saw all of the orders and saw that the orders were got out, had charge of the inspection of the ware and of the inspection of the returned goods.

Q. But you have never been a salesman? A. No, sir.

Q. And you have never been a jobber? A. No, sir.

Q. And you are not familiar with the goods of other manufacturers?

A. Not other than I have seen them in various show

1 rooms, etc., and as the firm with which I have been connected would buy pieces of other firms' manufacture, I have seen quite a number of pieces; I have seen quite a number of pieces also which were returned to the plants with which I have been connected by mistake instead of being returned to the source of manufacture.

Inasmuch as I, at Uniontown, was the man who had direct charge, and was responsible for the grading of all the ware sent out, and for making report as to the justice of claims for imperfect ware from the customers, the firm there took care to see that I was familiar with the grade of ware
2 shipped by other people.

Q. Now, while you were at Uniontown, how many furnaces were you running?

A. The number varied at different times of the year. When we first started up we started with one furnace and then we added more furnaces; we generally kept about five furnaces in operation.

Q. How many tubs did you get from one furnace in twenty-four hours by the hand method?

A. We would get about eleven to twelve tubs a turn, and three turns would make about anywheres from thirty-three
3 to thirty-six tubs a day with the hand method.

Q. That is of what sort of tubs, the five year, the best tubs or the second class tubs?

A. Taken as the run of kiln, that is some of course would be first class and some second. We started out to make them all good, but then we never got eleven or twelve good ones out of a turn. We took them as they came.

Q. In other words, the tubs that come from the factory are all made by the same process, but the ones that turn out to be the best are graded the guaranteed tubs, and the others the seconds, is that right?

4 A. That used to be the practice, but of late years there has been a great many tubs made which were never intended, or which were never expected, to be five year tubs; they were never expected to be anything better than what is known as a competition tub.

Q. That is a very light tub?

A. It is generally a light tub.

Q. And the NEMO is that sort of tub?

A. A tub corresponding to the NEMO. Those tubs are never expected to be anything but competition tubs.

Q. You say in using the hand method you average about thirty-three to thirty-six tubs in twenty-four hours? 1

A. Yes.

Q. In using the Arrott dredger, how many do you make?

A. We would make from fifty-eight—I beg your pardon—we would make from forty-eight up to sixty. Just roughly we figured with the hand dredge that it would take three furnaces a day to make one hundred tubs, and with the Arrott dredger it would take four furnaces to make one hundred tubs.

Mr. CHRISTY: Three or four?

THE WITNESS: I beg your pardon, three and two. 2

BY Mr. GROSVENOR:

Q. Do you know anything about the output of other factories per furnace?

A. Well, in a general way, I do; I do not know all of them.

Q. Don't you find that your output is considerably below that per day of other factories? I am speaking now of the Uniontown factory.

THE WITNESS: You mean with the hand dredge or with the pneumatic dredger? 3

Q. Well, of either?

A. I do not believe it is below the output of the average plant. There may be exceptions; there may be plants turning out a larger output by both methods—in fact, I know plants turning out a larger output by hand than we, and I know plants turning out a larger output with the pneumatic dredger than we, but I believe those plants are an exception.

Q. You mean they are old well established plants?

A. Not necessarily.

Q. What plants had you in mind as having a larger output than your plant? 4

A. I understand that at one time—I am not familiar with the practice now—that the Zelienople plant of the Iron City Co. turned out more tubs by the hand method than we did.

Q. Turned out more than you did by the hand method?

A. Yes; but we always held that their tubs were not of the same grade as our tubs, and I know that the Monaca

1 plant of the United States Sanitary Mfg. Co. turned out more tubs using the pneumatic dredger than we did. In this case, I do not believe that their tubs are of inferior quality to what our tubs were. Their large output is due in part—

Q. Who are you talking of now?

A. The United States Sanitary Mfg. Co. Their large output is due in part to the fact that they use a different style furnace from what we used at Uniontown. The superintendent of their plant told me that they had turned out a hundred and three tubs on one furnace in twenty-four hours.

2 Q. This is the United States?

A. This is the United States Sanitary Mfg. Co.

Q. And you attributed that to the fact that they have a better furnace?

A. To the fact that they have a different furnace entirely.

Q. The character of the furnace is very important in making these articles, isn't it? What sort of furnace did you have at Uniontown?

A. We had a semi-muffled gas burning furnace, and at the United States plant at Monaca they used a double furnace; they used one furnace for bringing the tub, coated 3 with slush coat, up to a medium red heat; then the other section of that furnace is used for bringing the tub from the medium red heat up to bright red heat necessary for enameling, and this can be done in a couple of minutes. This second furnace is also used for cooking the enamel on the iron. They are able to make this great speed simply because they have a pneumatic dredger and the men are able to stand the work of making one tub right after another without any time for rest; they could not do it if they had to use the hand method of applying the enamel. That is at the Monaca plant. They are getting the utmost advantage 4 out of the use of the pneumatic dredger.

Q. Now, as a matter of fact, don't you know that the McCrum-Howell Co. plant at Uniontown is one of the smaller plants manufacturing sanitary enameled iron ware?

A. Yes.

Q. It is, isn't it?

A. Yes; it is one of the most efficient plants, though.

Q. And the McCrum-Howell Co., which is one of the list of defendants, is given a special discount—or preferentials

below those allowed by the other manufacturers, who are also defendants, do you know that? 1

A. I do not know that; I think it is very likely, because Mr. McCrum was a very good man at making a bargain.

Q. Now, what is the output that you heard the Iron City gets out per day?

A. I heard a couple of years back that one man would make twenty or twenty-two tubs—that is, one crew would make twenty to twenty-two tubs on a turn, using the hand dredge. I also heard at that time that they did no batching and made all the tubs in two dredgings and that they took them as they came. If a tub would come out with a pin hole in it they would simply set it aside and sell it as B grade. 2 They made no attempt to make high-grade tubs when working at that speed.

Q. How many times did you put your tubs into the furnace?

A. At Uniontown we put the tub in cold covered with the slush coat, then when the tub was at dull red heat it was brought out and turned around and the other end put in first. That would be twice. All tubs received two coats of enamel and a large majority of them received another thin coat for finishing up spots which happened to be a little blue, 3 or covering up pin holes or something like that and put back into the furnace again. That is all, I think, two coats to a tub and the majority of them received three coats.

Q. What do you mean by saying that the Iron City tubs only got two coats? A. Two coats of enamel.

Q. That is all that you gave yours.

A. The majority of ours received three coats. I have talked with men who have worked at the Iron City plant, and they said some of the tubs at Iron City were made with one coat, that is one coat of cover enamel. I have seen a considerable amount of the Iron City product, or rather I 4 used to see a considerable amount of the Iron City product, and we never—I never considered that their product was up in quality to the product we were making, and we always felt that the Iron City Co. were attempting to turn out a big product, a large amount of product, rather than a good product or high-grade product.

Q. Which do you consider of the greatest importance in the manufacture of enameled iron ware? I want to give you

several things. You have said that the slush coat is very important? A. Yes.

Q. And that is a secret in your business? A. Yes.

Q. You have also said that the enameling coat is very important? A. Yes.

Q. The making of the powder? A. Yes.

Q. That also is a secret in your business? A. Yes.

Q. You have also testified as to the value of the Arrott dredger, or the pneumatic dredger, as compared with the hand dredge, is that right? A. Yes.

Q. Now, of those three things—I want you to base your answer frankly on the study which you have given this matter—which of those do you consider the most important? Let me get it clearly in your mind as to what I want. Would you rather have a poor slush coat and the Arrott dredger, or would you rather have a first class slush coat, such as you prepared according to your formula for the enamel powder and the hand dredge?

A. Well, that is a hard question to answer, simply because they are both essential. It would be something like asking a man which leg he would rather do without.

Q. If the Arrott dredger is so essential, what would you consider its value to the trade?

A. I do not understand what you mean? Do you mean if I were running a plant of a certain size how much would I—

Q. No, supposing you owned the Arrott patent, what would you consider its worth in the trade?

Mr. CHRISTY: I object to that as improper and as not being proper cross examination.

Q. Would you be willing to sell it for $5,000?

A. No, I would not. I might sell it—that is, I think I would put it out on a royalty basis, allow it to be used on a royalty basis.

Q. That is you would continue to own the Arrott patent, and you would license all the manufacturers of enameled ware to use it, you still retaining the rights, is that right?

A. That would be my procedure; I do not know whether it would be wise or not.

Q. Supposing you were to sell it to another man to license other manufacturers, what would you sell it for?

Mr. CHRISTY: That question is objected to on the ground of incompetency, on the ground of its not being proper cross examination and because it is purely speculative. 1

THE WITNESS: For all I could get. That would all depend upon the circumstances. Now, if I were a rich man, or had rich backing, so that I could prevent anyone from infringing upon the use of my patent, I would be in a position to ask a large amount of money for it, but being as I am, a poor man, without money to fight law-suits, I would have to take whatever I could get. 2

Q. Do you know anything about this forming of the licensing arrangement under Mr. Wayman during the early part of 1910? My question is for this purpose: I want to know whether your position with the company was of a character to enable you to deal with others respecting entering into a license arrangement.

A. I did not catch the first part of the question?

Q. You were at the McCrum-Howell Co. until when?

A. Until July 1, 1909.

Q. Then you were with the Humphryes Mfg. Co. in 1910, were you not? 3

A. I went to work for the Humphryes Mfg. Co. June 20, 1910.

Q. Were they using the Arrott dredger at that time?

A. They were using the Arrott dredger during the daytime and an electric device, which they had worked up in their own plant, and which seemed to me to be an infringement of the Arrott patent, at night. I mentioned in my testimony before that I advised them to discontinue the use of their electric device on account of the fact that it was not efficient, and was not giving the production that could be obtained by the use of the pneumatic dredger. They objected to doing that; they said they would have to keep their boilers going during the night and hire a night engineer, which would cost them six or seven dollars a day to use the pneumatic dredger instead of the electrical device, but I told them results would justify that expense and more too. They took my advice and discontinued the use of the electrical device the rest of the time I was in their employ. As to the first part of your question, or rather as to the first part of your 4

1 former question, Mr. D. A. Carpenter told me when I went to work for them that he had entered into some sort of combination with the other manufacturers before I had entered their employ, but as to the terms, etc., I knew nothing.

Q. He just told you the result?

A. Yes, that they had entered into it.

Q. The Humphryes Mfg. Co. is one of the small companies, isn't it?

A. The Humphryes is a five furnace plant; its production is not large.

Q. Which companies are the leaders in the trade?

2 A. The Standard Sanitary Mfg. Co. I believe is the largest.

Q. What is the next?

A. The next would be either Wolf of Chicago, or the Iron City plant.

Q. What is the next?

Mr. CHRISTY: Unless this examination is for the purpose of testing the knowledge of the witness it is objected to as immaterial.

THE WITNESS: Kohler has a large production; I presume he would be next, or possibly equal to the

3 United States Sanitary Company's plant at Monaca.

Q. How many pounds of enameling powder did you use down there in the ordinary five foot size tub?

A. With the pneumatic dredger we figured twenty pounds of enamel to the tub; that included not only the enamel which actually stayed on the tub, but the incidental loss, that is the enamel that flew up in the air and was lost in the dust.

Q. With the hand dredge how much did you use?

A. Twenty-five pounds. The difference was not alto-

4 gether in the amount of enamel that stayed on the tub, but it was due also to the fact that when the men were working with a great deal more exertion, and had to be exposed to the heat a longer time, it was impossible to have them be so careful in regard to wasting the enameling powder.

Q. Do you know how much the other manufacturers use, how much powder?

A. I have heard claims; I have never been able to consult their books or to see accurately.

Q. Did you keep books at the McCrum-Howell Co. showing the exact amount used? 1

A. We kept track of the cost of the chemicals and the amount of enamel used each two weeks, and then subdivided that between tubs and small ware, etc.

Q. When did you make up this estimate that you used five pounds more by the hand method than by the automatic dredger? A. When?

Q. Did you make these calculations after you were notified to be here as a witness?

A. No, that was common talk at our Uniontown plant; that is what we figured we were saving; that is one of the 2 reasons that we tried so strenuously to avoid coming back to the use of the hand dredge.

The actual amount of saving in the use of the automatic dredger I do not consider in just the amount saved in wages, or the amount saved in the cost of enamel. It lies more in the fact that you can run your plant easier and keep up your production better, have less returned goods and have a better quality of ware, and can sell it easier. Of course, the actual saving is some item, but then that is a small part of the advantage gained by using the pneumatic dredger.

Q. How many of those savings, and particularly how 3 much of this improved ware did you attribute to the fact that you had improved your slush coat, had also made a change of powder and also changed the proportions of the several kinds of pig iron that went into the cupola?

A. As to the change of the pig iron I do not attribute any saving to that, except in the cost of the pig iron itself. As to the advantage gained by changing the slush coat and the enamel powder, it is hard to estimate that accurately, because we were making these other changes at the same time, and if you vary two things at the same time it is hard to say just exactly which is giving you your result. 4

Q. In other words, you were making these changes in slush and in powder, at the same time you were changing your dredges? A. Yes.

Q. In fact, when you first went to Uniontown that factory was really at an experimental stage, the first few months after it started, was it not?

A. We had experienced enamelers, the same as we had in Blairsville; we had men who had been working at the enameling business for a good many years.

1 Q. You did not make any changes then in your powder until you got your dredge, is that right?

A. No, I changed the enamel as soon as we started up at Uniontown—in fact, I changed the enamel the second day I arrived at Blairsville.

Q. You did not wait until you got a different dredge?

A. But—

Q. Answer my question. A. No, sir.

Q. Now, then, what did you mean by saying, as you did a question or two before, that the dredge enabled you to make changes in the powder, or to use a different powder,
2 when you had made these changes as soon as you went there? Did you make any further changes?

A. Yes, the changes I made when I first went to Blairsville were minor changes and I had to keep in mind all the time that the enamel must flow. That was a minor change and I could not make the radical change that I did make at Uniontown until after we adopted the use of the other dredge.

Q. What change did you make after you adopted the Arrott dredger?

A. I made an enamel which would not flow as much. I
3 did that because we had been having considerable trouble from chipping, due to beads on our ware and we wanted to avoid that chipping.

Q. Isn't it very important in making your powder to see that the powder contracts and expands evenly with the iron?

A. That is important, yes, sir.

Q. Isn't that one of the most important things in the selection of the character of your powder, to try to arrive at a powder in which the co-efficient of expansion—is that the term? A. That is the term that has been used.

Q. In which the co-efficient of expansion of your powder
4 and of your cast iron will be the same?

A. That is the theory that has been held up to the present time; that theory is in question at the present time. There have been accurate measurements made of the effect of composition or co-efficient of expansion, and the way the case stands now, it seems that when we change a composition so as to avoid crazing we are really not reducing the co-efficient of expansion, but we may be raising it.

So the question as to whether the co-efficient of expansion is the cause of crazing or not is not settled at the present

time. What you have said used to be accepted as the truth. 1

Q. If your powder does not contract and expand fairly evenly with your iron, you will have all sorts of trouble, won't you?

A. I am not sure about that. We have carried on some experiments at the university which seem to show that the rate of contraction on a glass and the body to which it is applied may be materially different and yet not cause crazing. There are other factors that enter into crazing besides the comparative rate of expansion and contraction. What these factors are has not been fully determined at the present time. 2

Q. Supposing, professor, a pupil came to you at your university and said, I am going to go to a factory, an enameled ware factory, and I want you to tell me how to make some proper enameling powder. What is the first thing he has got to do, to try to do, in making up his powder? You have mentioned over twenty-five or thirty ingredients, now he must mix all those ingredients with the particular object in view, namely, to get a particular character of powder?

A. Yes.

Q. To conform to the cast iron? A. Yes.

Q. Now what would be your instructions to him? 3

A. My instructions would be as follows: get the receipt they are using at that plant at the present time, and if it is not satisfactory change it in various ways so as to make it satisfactory. Now, I would tell him what to do to stop crazing, you understand, and what ingredients to add to stop crazing, which would stop crazing in some cases, but I would not say that you are thereby reducing the co-efficient of expansion—in other words, we know how to stop crazing, or how to cause crazing, but we do not know whether we are doing it by changing the co-efficient of expansion, or whether we are doing it by bringing about other conditions in the 4 enamel.

Q. Supposing that he found pin holes, and these other things, rolls, and beads after using the receipt which he found at the factory, and then came back to you, would you tell him what to do?

A. I would tell him in a general way what to do. I would tell him the various things that may be causing the pinholes; for instance, I would tell him to investigate as to which one of these causes seemed to be active in the plant in

Q. As a matter of fact, Mr. Staley, you could not go into a jobber's store room and pick out ware that is made by the hand dredge and pick out ware that is made by the pneumatic dredger, could you?

A. No, but I could pick out the good tubs and the bad tubs.

Q. They are made both ways?

A. Yes, and if a man had bought the run of kiln, bought tubs as they come from the kiln, I feel pretty confident that I would find more poor ones among those made by the hand dredge than among those made by the pneumatic dredger. There was remarkable improvement in the quality of our ware after we adopted the use of the pneumatic dredger.

Q. Was there any increase in output?

A. There was a decided increase in output.

Examination of the Witness Suspended.

Thereupon, at 4:10 P. M. the hearing was adjourned to meet again tomorrow morning, March 24, 1911, at 10:30 A. M. at the same place.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1

FOR THE DISTRICT OF MARYLAND.

UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Federal Building, Pittsburgh, Pa., 2
10:30 o'clock A. M., March 24, 1911.

Met pursuant to adjournment at 10:30 A. M., Federal Building, Pittsburgh, Pa., at which time and place the following depositions were taken on behalf of the Standard Sanitary Manufacturing Company and other defendants:

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
representing the United States of America.
HERBERT NOBLE, Esq.,
MARSHALL A. CHRISTY, Esq., and 3
HARTWELL P. HEATH, Esq.,
representing the Standard Sanitary Manufacturing Company, *et al.*

HOMER F. STALEY, a witness having heretofore testified, and suspended on account of adjournment yesterday, resumed the stand and testified as follows:

CROSS EXAMINATION BY Mr. GROSVENOR (resumed):

Q. On page 1776 of yesterday's record this question was asked you: "Do you know anything about this forming of 4
the licensing arrangement under Mr. Wayman during the early part of 1910? My question is for this purpose: I want to know whether your position with the company was of a character to enable you to deal with others respecting entering into a license arrangement." You did not answer that question, and I would like to have you answer it now.

A. My position was not of such a character. I was simply informed that they had entered into an arrangement—

Q. I do not want that; I do not want hearsay. Did you or not have anything to do with Mr. Wayman?

A. I had nothing to do with the arrangement.

Q. Did you have anything to do with the other manufacturers? A. No, sir.

Q. In regard to this arrangement? A. I had not.

Q. In reference to the weight of the dredges, I would like to ask you a question: as I understand it, your hand dredge, your larger dredge, was supported by counterweight, is that correct? A. It is.

Q. And the automatic dredger is supported in the same way? A. It is.

Q. So that as far as weight is concerned, the weight is supported equally in the case of both dredges, only in the case of the hand dredge the operator can only use one hand to guide it, whereas in the case of the automatic dredger he uses both hands, that is correct, is it not?

A. That is correct. In addition, I would say that the actual weight of the hand dredge is liable to be a little greater, but that would make but a slight difference as each weight is counterpoised anyhow.

Q. There would be a slight difference? A. Yes.

RE-DIRECT EXAMINATION BY MR. CHRISTY:

Q. What is the reputation of the ceramic engineering department at the Ohio State University?

A. It has the reputation at the present time of being the foremost school in ceramic engineering in America.

Examination of the Witness Concluded.

Signature of the witness waived by agreement of counsel for the respective parties.

GEORGE J. BLACKHAM, a witness produced on behalf 1
of the Standard Sanitary Mfg. Company, *et al.*, having first been duly cautioned and sworn by the examiner, testified as follows:

DIRECT EXAMINATION BY MR. CHRISTY:

Q. How old are you, Mr. Blackham?

A. I am 34 years of age.

Q. Where do you live? A. At Uniontown, Pa.

Q. Will you kindly tell us in what business you are now engaged? A. In the manufacture of enameled ware.

Q. By what company? A. For the McCrum-Howell Co. 2

Q. And in what position? A. As manager.

Q. How long have you been maneger of the McCrum-Howell Company? A. For about three years.

Q. Were you in the enamel business prior to that time?

A. I was.

Q. Suppose you just state when you went into the enameling business, and what you did, giving the dates as nearly as you can fix them.

A. Well I have been in it all my life, that is from the time I commenced to work.

Q. Well, I mean where did you start and about when and 3
follow it right down to the present time?

A. I worked for the Standard Manufacturing Co. at Allegheny eighteen years ago for about three years; then at Dawes and Myler at New Brighton for about two years; about six months for the Boggs-Jones Company at Sharpsburg; about three years for the Victor Manufacturing Co. at Aliquippa, Pa.; about a year for the Louis Lipp Co. in Cincinnati; two years for the Iron City Sanitary Mfg. Co. in Zelienople; about three years for the McCrum-Howell Co. in Blairsville; two years for the Wheeling Enameling Company in Wheeling, and four years for the McCrum-Howell 4
Co. in Uniontown.

Q. That is the last four years you have been at Uniontown? A. Yes, sir.

Q. And before that you were at Wheeling? A. Yes, sir.

Q. And before that at Blairsville? A. Yes.

Q. When did you leave Blairsville?

A. In 1906, I think.

Q. How did you happen to leave there?

1 A. On account of the factory burning down at Blairsville.

Q. What were they using at Blairsville at the time that you left, or immediately before the time that you left, for enameling tubs and other articles? A. The hand dredge.

Q. What did they use at the Wheeling Enameling Company for the same purpose?

A. They used the hand dredge.

Q. Will you describe that dredge, the hand dredge, in a general way?

A. Well, the hand dredge was a dredge with a handle of
2 about five feet long, supported by counterbalance; it was held in the left hand and guided by the left hand, and the powder was sieved on the ware by means of a tapper.

Q. In which hand was the tapper held by the operator?

A. The tapper was held in the right hand of the operator or enameler.

Q. About what date was that when you came back to Uniontown? A. About 1907.

Q. And what did they use at Uniontown when you came back for sifting the enamel? A. They used an air dredger.

Q. Please describe that air dredger in a general way?

3 A. The air dredger was a dredge with a handle about 5 feet long with an air hammer attached to one end that vibrated the sieve. The enamelers simply held the dredger in both hands, and the hammer, or vibrator, caused the powder to flow over the ware.

Q. Did you find any advantage in the use of the air dredger over the hand dredge?

A. Yes, quite an advantage.

Q. Regarding the flow of the enamel, how was it?

A. The flow of the enamel with the air dredger was even and continuous; with the hand dredge the flow of the enamel
4 is uneven.

Q. How was it as regards the speed of enameling a tub?

A. With the air dredger it is done more quickly than with the hand dredge.

Q. Can you give us some idea of how more quickly it is done.

A. Well, as compared with the hand dredge—with the hand dredge the enameler would enamel twelve tubs in eight hours and with the air dredger the enameler would enamel from sixteen to eighteen tubs in the same length of time.

Q. Did the enameler have as much loss with the air dredger as with the hand dredge? 1

A. No, he did not have as much loss with the air dredger.

Q. Do you know about what your present percentage of loss is with the air dredger?

A. Our loss is less than 1 per cent. with the air dredger.

Q. How was it upon the workman? Was it easier with the air dredger than with the hand dredge, or just as hard with it?

A. It is much easier to enamel by the use of the air dredger.

Q. Why is that? 2

Q. Because the operator hasn't anything to do except to guide the dredge with the air dredger. There is no work connected with the vibrating of it, and the operator has only, or the enameler has only to guide the dredge over the ware.

Q. Do you use as skilled labor with the air dredger as you used formerly with the hand dredge? A. No, sir.

Q. What class of labor do you use now?

A. We are using foreign labor now with the air dredger.

Q. What class of labor did you use with the hand dredge?

A. We used American labor with the hand dredge. 3

Q. Do you pay your enamelers as much per piece now as formerly? A. No, sir.

Q. Do they make as much money now with the air dredger as they did with the hand dredge?

A. They make more money with the air dredger than they did before.

Q. How about the training of the men,—was it as difficult with the air dredger to train the men to enamel as with the hand dredge?

A. It was not as difficult with the air dredger as it was with the hand dredge. 4

Q. How many men did you have to a furnace when using the hand dredge? A. We had three men on a furnace.

Q. And what would each of those men do?

A. One man turned the table and opened the door; another man dredged the rim of a bath tub, and the third man dredged the inside of the bath tub.

Q. How many men do you have on the furnace with the air dredger? A. Two men.

Q. And what would each of those do?

1 A. One dredges the rim and the other dredges the inside of the tub. In using the air dredger we also have an air table, a table operated by air.

Q. And one of the men operates the table how?

A. And the enameler operates the table.

Mr. GROSVENOR: You mean by "the enameler," the man who does the inside work?

THE WITNESS: Yes, he operates the table with a button, with his feet.

BY Mr. CHRISTY:

2 Q. How about the furnace door?

A. The furnace door is operated by a button; it is operated by air, and the man operates it with his feet.

Q. How does the quality of the ware made by the air dredger compare with the ware made by the hand dredge?

A. The quality of the ware made with the air dredger is superior to that made by the hand dredge.

Q. And for what reason?

A. For the reason that it is much smoother.

CROSS EXAMINATION BY Mr. GROSVENOR:

3 Q. Did you have anything to do, while you were at the McCrum-Howell Co., with the subject of obtaining a license to use the Arrott patent? A. No, sir.

Q. Either from the Standard Sanitary Mfg. Co. or from E. L. Wayman? A. No, sir.

Q. You do not know anything about those matters?

A. I was not consulted at all.

Q. Now you have spoken about this output, you say you would make from 12 to 13 to 14 tubs—

A. About twelve tubs with the hand dredge.

Q. In a turn? A. Yes.

4 Q. In a turn of eight hours? A. Yes.

Q. And from sixteen to eighteen by the air dredger in a turn? A. Yes.

Q. Now, as you went to these different factories that you have named—you have named six or seven of them, did you find that the output varied?

A. No, twelve tubs seem to be the general average for eight hours with the hand dredge.

Q. No matter where it was?

A. No matter where it was. 1

Q. You have used the air dredge only at Uniontown, is that right? A. That is correct.

Q. Then the maximum tubs turned out by the hand dredge at plants where you have worked is about 36 tubs in 24 hours? A. Yes, sir.

Q. What were they using at Allegheny eighteen years ago when you were there three years?

A. They were using the hand dredge.

Q. And what were they using at Dawes & Myler when you were there two years? A. The hand dredge.

Q. Were you an enameler? A. No, sir, I was a molder. 2

Q. When you were at the Iron City plant at Zelienople, what were they using?

A. They were using the hand dredge.

Q. A hand dredge supported by a counterpoise?

A. Yes, sir.

Q. This has been eight or nine years ago? A. It has.

Q. Was it then known as the Iron City plant?

A. It was.

Q. Was it run under the present management?

A. No, sir, it was not running under the present management. 3

Q. Now, you have said that the ware is better when you use the air dredger? A. Yes.

Q. By that you mean that it is more likely that you will have a good tub when you use that air dredger?

A. It is more likely that we get a good tub when we use the air dredger.

Q. But when you do get a good tub with a hand dredge it is just as good as a tub made by the air dredger, is it not?

A. It is.

Q. Then my understanding of your answer on direct examination, in reply to a question of counsel regarding quality, is that you simply meant that the proportion of the better class of tubs is greater with the air dredger than it is with the hand dredge? 4

A. That is correct, except with the use of the air dredger a tub is smoother than one made with the hand dredge; the tub is smoother; the general appearance of the tub is smoother when it is made with the air dredger.

Q. You have testified that with the hand dredge you used American labor? A. Yes.

1 Q. And now with the air dredger you are using foreign labor? A. Yes.

Q. But that the workmen now make more money with the air dredger?

A. The workmen make more money with the air dredger than they did with the hand dredge.

Q. Do you have charge of the making of the powder?

A. I do.

Q. You succeeded Mr. Staley? A. I did.

Q. Do you have charge of the making of the slush also?

A. I make the slush.

2 Q. Do you consider the making of the slush an important part in the enameling of ware? A. Very important.

Q. And the application of the slush is important, is it not? A. It is.

Q. And the firing? A. Is very important.

Q. Those are as important matters as there are in the manufacture of sanitary enameled iron ware?

A. Yes, those are as important as any of the others, and even more so.

Q. How about the making of the powder, is that important? A. Very important.

3 Q. And those are secrets of the business, aren't they?

A. They are considered so.

RE-DIRECT EXAMINATION BY Mr. CHRISTY:

Q. Even though it is true, as you say, that the making of the slush, and the enameling powder, and the firing are all important matters, does that in any way affect your testimony as to the importance and advantage of the use of the air dredger?

A. It does not affect my testimony in the least; it does not have any bearing on the dredge.

4 RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Now, Mr. Blackham, if you used your present slush coat and had a good powder, isn't it possible to make a commercial, salable article by using the hand dredge? A. It is.

Examination of the Witness Concluded.

Signature of the witness waived by agreement of counsel for the respective parties.

Thereupon— 1

CHARLES E. WILKINSON, a witness produced on behalf of the Standard Sanitary Manufacturing Co., *et al.*, after first being duly cautioned and sworn by the Examiner, testified as follows:

DIRECT EXAMINATION BY MR. CHRISTY:

Q. How old are you? A. Twenty-eight years old.

Q. Where do you live? A. Uniontown, Pa.

Q. What is your business at this time?

A. Enameling foreman.

Q. For what works? 2

A. The McCrum-Howell Co. at Uniontown, Pa.

Q. How long have you been with the McCrum-Howell Company? A. A little over four years.

Q. They are at Uniontown? A. Yes.

Q. What did you do before you went with them?

A. Then I worked two years for the Columbia Plate Glass Co. at Blairsville, Pa.

Q. What did you do before that?

A. I worked two years for the McCrum-Howell Co. in Blairsville, Pa.

Q. You left Blairsville when? A. In January, 1907. 3

Q. When did you leave the McCrum-Howell Co. at Blairsville and go with the Plate Glass Company?

A. In February of 1905.

Q. And why did you make that change?

A. Well, I wasn't working steady and I got a chance of a better position.

Q. Oh, I understood that you were changed on account of the fire? A. No.

Q. When did the fire occur?

A. The fire occurred in June or July, I believe; it occurred some months after I had left. 4

Q. When you were working for the McCrum-Howell Co. at Blairsville, how were you employed?

A. At the time that I left I was employed as a tub enameler.

Q. What were you using there at that time for spreading the enamel on the tub?

A. We were using the hand dredge.

Q. Just describe that hand dredge in a general way, please.

1 A. Well, it was a 12-inch dredge with a 5-foot wooden handle on it; I would hold it in my left hand by gripping it with my left hand and arm and guide it over the top and beat the dredge with the tapper, an oblong tapper, and that sieved the powder on the tub.

Q. You held the tapper in which hand?

A. My right hand.

Q. When you went back to the McCrum-Howell Co. at Uniontown what position did you take?

A. Enameling tubs.

Q. And what did you use then for spreading the enamel
2 on the tub? A. I used the air dredger.

Q. Describe that air dredger in a general way, please.

A. Well, the air dredger you held in both hands; I would hold the handle of the dredge with my right hand, and would operate the hammer with my left hand; I have practically got a grip with both hands, because you have to hold the button to operate the hammer.

Q. The hammer is just an extension of the upper end of the handle, is it not?

A. Yes, it is all practically one piece.

Q. And as long as you held your finger on the button the
3 enamel was agitated and vibrated through the sieve?

A. Yes.

Q. As regards the labor of operating these two dredges, how do they compare?

A. It is much easier to enamel with the air dredger than it is to enamel with the hand dredge.

Q. Does it take any more skill with the hand dredge than with the air dredger? A. It does.

Q. Where did the skill come in, mainly?

A. In the hand dredge?

Q. In the hand dredge.

4 A. Well, in learning to guide the dredge with the left hand and in becoming accustomed to using the tapper.

Q. Do you have to tap fast?

A. Yes, that was the best way to do.

Q. Why did you have to tap fast?

A. Well, the faster you tapped, the more evenly you got the enamel on.

Q. Regarding this evenness of enamel, how did the air dredger compare with the hand dredge?

A. The air dredger is much better than the hand dredge.

Q. The taps are faster? 1

A. Yes, and it has a more continuous vibration than the hand dredge.

Q. Does this have any effect on the quality of the ware?

A. It did with me.

Q. In what way?

A. Why, you can make nicer tubs with the air dredger than with the hand dredge.

Q. How do you mean by "nicer?" A. Smoother.

Q. How did the number of tubs that you made with the two dredges compare in the same time?

A. I could make more with the air dredger than I could 2 with the hand dredge.

Q. Do you remember how many you made in a turn with the hand dredge, in an eight-hour turn. A. Twelve tubs.

Q. And do you remember how many with the air dredger in the same time?

A. Sixteen is the amount when I was working.

Q. You liked the air dredger better than the hand dredge?

A. I do.

Q. I suppose you always lost some tubs when you were an enameler? A. Yes.

Q. When did you get the greater loss, with the hand 3 dredge or with the air dredger?

A. I had the greater loss with the hand dredge than with the air dredger.

Q. Have you any way of telling about how many tubs you would lose in a turn with the hand dredge?

A. Well, I should say—

Q. I do not want you to guess, but I would like you to give it with reasonable accuracy?

A. I think it was about 5 per cent.

Mr. GROSVENOR: You think it was 5 per cent. loss with the hand dredge? 4

A. Yes.

BY MR. CHRISTY:

Q. Do you know what the loss is now at the McCrum-Howell Co. using the air dredger in the enameling room?

A. I do.

Q. What is it? A. About 1 per cent.

Q. Is there any difference in the carefulness with which

1 tubs are inspected now with the air dredger as compared with the hand dredge? A. There is.

Q. How is it now?

A. They are a great deal stricter now and the ware has to be better than when I was enameling with the hand dredge.

Q. What did you say your present position was?

A. Enameling foreman of the McCrum-Howell Company.

Q. About when were you made foreman?

A. In July, 1908, I believe.

CROSS EXAMINATION BY Mr. GROSVENOR:

2 Q. Mr. Wilkinson, did you know anything about the entering into a licensing agreement to use the air dredger in the year 1910, on the part of your company? A. No, sir.

Q. You did not have any dealings with the Standard?

A. No, sir.

Q. Or other companies in regard to that? A. No, sir.

Q. Or with Mr. Wayman? A. No, sir.

Q. You are the enameling foreman for the McCrum-Howell Co.? A. Yes, sir.

Q. And have been since July, 1908? A. Yes, sir.

Q. Did you go to the factory at Uniontown about as soon
3 as it started? A. Why, yes, sir.

Q. How many foremen have you at the works now? You have the enameling foreman, is there any other foreman on any other branch of the works? A. Oh, yes.

Q. What other foremen are there?

A. Well, there is a night foreman in the enameling room. There is a foreman in the packing room; there is a foreman in the cleaning room and a foreman in the foundry.

Q. Do you have charge of the making of the powder there? A. No, sir.

Q. During all the time you had been there has there been
4 a foreman of the enameling room?

A. No, sir, I was the first man as foreman in the enameling room.

Q. They did not have a foreman before that? A. No, sir.

Q. For a time? A. No, sir.

Q. But since July, 1908, you have been foreman of the enameling room? A. I have.

Q. And in that time there has been a foreman at night also? A. No.

Q. Since when has there been a foreman at night in the enameling room? 1

A. As near as I can remember the night foreman was put on in April or May of 1909.

Q. Before that time there had not been any night foreman? A. No, sir.

Q. Now, when the company first started up—I mean by "the company," the new factory, you understand? A. Yes.

Q. When the new factory commenced in the spring of 1907 did they have a foreman for the enameling room?

A. No, sir.

Q. Neither by day or by night? A. No, sir. 2

Q. Do you recall using the hand dredge for a few months at the Uniontown plant at the beginning of 1907?

A. I only used it when the air dredger wouldn't work.

Q. Mr. Staley testified yesterday that there had been a lay-off of foremen by virtue of the use of the air dredger, you do not know anything about that, do you?

A. When I came there—

Q. Came to Uniontown?

A. When I came to Uniontown there was no foreman in the enameling room that I know of. Mr. Staley was my boss. 3

Q. But there is a foreman in the enameling room now?

A. Yes.

Q. And there has been since July of 1908? A. Yes, sir.

Q. What are Mr. Blackham's duties, is he the general boss? A. He is.

Q. He succeeded Mr. Staley, didn't he?

A. As mixer he did.

Q. By mixer you mean what? A. Making the powder.

Q. And slush coat? A. Yes.

Q. Who took over the other duties?

A. Well, Mr. Blackham looks after all of them now. 4

Q. You testified on direct examination that with the hand dredge you lost about five per cent. of the tubs?

A. That is my—

Q. That is as near as you can estimate it? A. Yes.

Q. Then the 95 per cent. represented tubs that were successful? A. Well—

Q. I mean that were salable? A. Yes, that were salable.

Q. And today 99 per cent. of them are salable?

A. Yes, sir.

1 Q. You did then make with the hand dredge commercial, salable articles, is that right? A. I guess so.

Q. What is that? A. The company accepted them.

Q. And the company sold them? A. I suppose so.

Q. Have you been using the hand dredge within the last four years with the McCrum-Howell Company?

A. No, sir, only in cases where the air had played out and just to finish out a piece of ware I used it.

Q. You keep them ready in case something would happen? A. No, sir.

Q. You do not?

2 A. No, sir, not now; that was when I first went there.

RE-DIRECT EXAMINATION BY Mr. CHRISTY:

Q. Do you remember when that change from American labor to foreign labor was made at Uniontown?

A. Yes, sir.

Q. About when was that? A. That was in July, 1908.

Q. That was when you were made foreman?

A. Yes, sir.

Q. When they were using American labor they did not need a foreman? A. No, sir.

3 Q. And only put in a foreman when they commenced to use foreign labor, is that right? A. Yes.

Q. When you went to work at Uniontown was the factory already equipped with air dredgers? A. Yes.

Q. Did you go right at the start?

A. No, sir, they started to enamel in October, I believe of 1906.

Q. And you went when? A. I went in January, 1907.

Q. You say that at first when they commenced to use the air dredger at Uniontown that you occasionally used the hand dredge to finish a tub when the air dredger was broken

4 down? A. Yes.

Q. You did that yourself? A. Yes.

Q. Did the other men generally do that? A. No, sir.

Q. Why? A. They didn't know how.

Q. You were the only one using the hand dredge?

A. Yes.

Examination of the Witness Concluded.

Signature of the witness waived by agreement of counsel for the respective parties.

Mr. GROSVENOR: Since I have heard this witness's testimony it would seem that Mr. Staley is not quite clear in reference to the foremen in the enameling room. 1

Mr. CHRISTY: I will recall him.

Mr. GROSVENOR: I think that would be better. I will ask him a few questions.

Mr. CHRISTY: I may as well examine him.

HOMER F. STALEY (recalled):

DIRECT EXAMINATION BY Mr. CHRISTY: 2

Q. You have heard the testimony of the last witness, Prof. Staley, about the matter of foremen at Uniontown, did you not? A. I did.

Q. Have you anything to say on that point?

A. The fact is that we had two foremen at Blairsville, and at Uniontown we had no foreman in the enameling room until Mr. Wilkinson was made day foreman in 1908. The reason for that was because we changed from American labor to foreign labor, practically unskilled labor, as very few of the men had any experience in the enameling business. Mr. Wilkinson was not only the foreman but the instructor in the application of the enamel. Before that, in addition to my other duties as superintendent, I had taken care of the labor, in bossing the men, etc., in the enameling room. Does that make it clear now? 3

Mr. CHRISTY: I think that is clear, as far as I am concerned.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Now, you said in your testimony yesterday at page 1732: "at Blairsville we had, in addition to the superintendent of the plant, a day foreman and a night foreman in our enameling room. At Uniontown, when I was acting as superintendent, I was able to turn out a larger production without a foreman, either by day or by night. The actual saving in salaries, as I remember it, by doing without these two foremen was $180 a month. Q. And do I understand that this last saving that you have mentioned was directly due to the substitution of the pneumatic dredger for the hand dredge? A. It was, counting the 4

1 fact that these auxiliary aids could be used with the pneumatic dredger and could not be used with the hand dredge." Now, you were at Uniontown in July, 1908, were you?

A. I was at Uniontown in July 1908.

Q. Then at the time that you left there, as a matter of fact, there was a day foreman and night foreman in your enameling room.

A. At the time I left. I said at Uniontown we were able to do without the foremen due to the change in dredgers with the same class of labor. Now, when we changed our class of labor, due to the fact that we did change our
2 class of labor we had to put on foremen. That was done in July, 1908. If we had continued with the same class of labor that we had been using up to July, 1908, in Uniontown, or the same class of labor that we had used in Blairsville, we would not have had to put on a foreman.

Q. Do you think your answer as you gave it yesterday is entirely fair? Doesn't it give the impression that you had permanently done away with the foremen, both by day and by night, in your enameling room, as you gave your testimony yesterday?

A. I certainly did not intend to be unfair.

3 Q. And now you qualify your testimony to mean that only where you had American labor you required no foreman?

A. Where we had skilled labor we required no foreman, that is what I wish to say.

Q. Then this saving of salary is not now being accomplished?

A. The saving of salaries is not being accomplished because the advantage gained by the change from one dredger to the other dredger has been counter-balanced by the change from American to foreign labor, but it was ac-
4 complished for something like two years at Uniontown.

Q. You, in your testimony yesterday, said: "the actual saving in salaries, as I remember it, by doing without these two foremen was $180 a month?" A. Yes.

Q. That saving occurred then only during that period?

A. Only during the period we kept the same class of labor.

Q. And are these foreign workmen now employed making more than the Americans formerly made with the hand dredge?

A. I do not know now. I have not been at the plant since 1909, July, 1909, so I cannot speak for the present time. 1

Q. When did you put in foreign labor?

A. In July, 1908.

Q. Did the wages of these men using the air dredger gain or decrease as compared with the wages made by the American on the hand dredge?

A. As soon as the foreign labor became ordinarily proficient in the enameling of tubs or ware they made more wages. At first, a man would not make as much, because we had to take him out of the street, or take a laborer off of the pig iron pile and teach him the business. While he was learning he did not make as much, but after he was proficient he made more than the men did who worked on the hand method of enameling. 2

There is one other question in the record which was asked me that I overlooked to answer. That was on the point of whether the furnace was an important item in the enameling of ware. If you care to have me, I will answer that question now.

Mr. GROSVENOR: I have no objection. 3

THE WITNESS: Of course, it is important to have a fairly good furnace, one in which, for instance, the flames do not come in direct contact with the piece of enameled ware being enameled, but the furnaces, or furnace, can vary widely in type and mode of construction.

I have used furnaces burning gas with the closed muffler, that is where the flames do not go into the space, or room, where the piece of ware was at all, and I have used furnaces burning gas with semi-muffled top, that is just bagged walls, to keep the flame from getting too close to the ware, but with the top of the room where the ware was being heated open so that the flame did not writhe, or flow through the space above the piece of ware; I have used muffled furnaces, closed muffles, using coal and I got good ware and was able to get good ware with any one of that style of furnace. The type of furnace can vary widely; the kind of fuel used can vary within very wide limits. 4

1 Q. Isn't it a fact that the output of the furnace is very largely dependent upon the character of the furnace?

A. With a given amount of fuel it is, but you can get as much output with one furnace as you can with another if you burn a little more fuel in one than you did in the other, that is a semi-muffled type furnace does not require as much fuel as a closed muffled type, that is the open semi-muffled does not require as much as the closed. You can get about as much ware from a closed muffled as you can from the semi-muffled, but you have to burn more fuel and your repair bill for your furnace will be larger.

2 Q. As you went around to these several plants in February of this year, did you find the general output of the furnaces the same throughout?

A. The output of the furnaces seemed to be just about the same, except, as I stated yesterday, the output per furnace, or rather per double furnace, at the United States plant was a great deal larger than any of the other plants due to the fact that they used a patented furnace consisting of two compartments.

Q. What is the output of the Colwell Lead Company per furnace? A. May I refer to my note book?

3 Q. Does it contain the notes of your visit there?

A. It does, yes, notes taken down at the time.

Q. You may look at it.

(Witness here refers to book.)

A. I do not have it. As I remember—I would not wish to state this as a definite fact—it was about 16 tubs.

Q. Sixteen tubs a turn?

A. Yes; The Colwell Lead Co., though, can hardly be classed as one of the firms which is getting the full benefit of the use of the pneumatic dredger.

Q. In that case was the small output due to the fact

4 that they did not keep their furnace sufficiently supplied with fuel?

A. No, the small—I do not consider sixteen tubs a turn especially small—but what I wished to say about the Colwell Lead Company was while they had the pneumatic dredgers in their plant, yet, they did not have the pneumatic dredgers fitted up in proper shape and did not have any of the auxiliary aids in manufacture which are necessary to get the full benefit of the pneumatic dredger.

any of the auxiliary aids in manufacture which are necessary 1
to get the full benefit of the pneumatic dredger.

Q. Do you know whether those aids are patented?

A. The use of the aids is not patented, as I understand it; some particular styles of construction of these various aids are patented.

Q. Now, take the next plant that you went over, you went over the Mott Iron Works? A. Yes.

Q. What is their output per furnace?

A. Sixteen tubs, about sixteen tubs. Mr. Ditheridge said —I was merely going to say that he told me how much they used to get by the hand dredge and how much they are 2
getting now.

Q. Their output was sixteen tubs? A. Yes.

Q. You went over the Allegheny plant of the Standard Sanitary Mfg. Co., did you not? A. Yes.

Q. What was the output there?

A. I did not inquire as to the output at the Allegheny plant.

Q. What was it at the New Brighton plant, did you go there? A. I did not go there.

Q. What other plant have you been over?

A. I have been over the plant of the Humphryes Mfg. 3
Co. at Mansfield.

Q. What is their output per turn?

A. It would vary from fourteen to eighteen tubs.

Q. Have you been over any others?

A. No. I have been over Mr. Cook's plant at Blairsville, but I did not inquire as to how many tubs he was making. I am not able to say.

RE-DIRECT EXAMINATION BY Mr. CHRISTY:

Q. Having in mind the fact that the United States Sanitary Co., by reason of its improved furnace, has the larger 4
output,—I believe you stated that? A. Yes.

Q. It is true, is it not, that so far as commercial advantages are concerned, this pneumatic dredger can be operated with enameled tubs about as fast as any commercial form of furnace can heat the tubs?

A. Yes, I believe that is true. I believe that the United States Co. are heating tubs as fast as it is possible to make enamel ware. I do not believe their speed limit will ever be materially exceeded.

1 Examination of the Witness Concluded.

Signature Waived.

Mr. GROSVENOR: Mr. Staley, by referring to his note-book, finds that he can answer the question as to the output of the Mott plant. I would like to have him answer that.

HOMER F. STALEY (recalled):

THE WITNESS: I find by referring to my note book that Mr. Ditheridge told me that at the J. L. 2 Mott plant they used to get fifteen to sixteen tubs per turn before the use of the pneumatic dredger, and now they get twelve to twenty-two tubs using the pneumatic dredger. As I stated before in my testimony, they do not use the pneumatic dredger in exactly the form it is used in other plants. It is a modification of the method of using the Arrott dredger.

Mr. CHRISTY: Counsel for the defendants objects to this testimony as purely hearsay.

Examination of the Witness Concluded.

3 Signature Waived.

Mr. NOBLE: I have a telegram here from Mr. Honeyman, as follows: "will it be convenient to all parties for me to take some testimony on Monday next at Pittsburgh, if so, I will arrange at once. Answer." That came to Mr. Wayman's office last night for me. Is that agreeable, gentlemen?

Mr. GROSVENOR: It is all right for us.

Mr. NOBLE: Now, we have some more witnesses we are going to call, so if it is agreeable for you to 4 go ahead on Monday I can arrange to have the witnesses here.

Mr. GROSVENOR: Have a number of them here, so we will not have to waste any time. When shall we meet Monday?

Mr. NOBLE: At 11 o'clock in this room.

Thereupon, at 12:40 P. M. the taking of testimony was then adjourned until Monday, March 27, 1911, at the same place, 309 Federal Building, at 11 o'clock.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Federal Building, Pittsburgh, Pa., 2
March 27, 1911.

Pursuant to adjournment, the hearing was resumed at the Federal Building, in Pittsburgh, Pa., on this 27th day of March, 1911, at 11:00 A. M.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
on behalf of the United States of America.
HERBERT NOBLE, Esq.,
MARSHALL A. CHRISTY, Esq.,
HARTWELL P. HEATH, Esq., 3
on behalf of the Standard Sanitary Mfg. Co., *et al.*

No witnesses being produced, the taking of testimony was adjourned until the following morning, March 28, 1911, at 11 o'clock, at the same place.

4

1 IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

2 Federal Building, Pittsburgh, Pa.,
March 28, 1911.

Pursuant to adjournment, the hearing was resumed at the Federal Building, in Pittsburgh, Pa., on this 28th day of March, 1911, at 11 A. M.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
on behalf of the United States of America.

3 Mr. Francis J. Tomasson, representing Marshall A. Christy, Esq., appeared and stated that the witness who was expected from New York had not arrived, and requested on behalf of Mr. Christy that the hearing be adjourned until 1 P. M.

Whereupon, the hearing was then adjourned until 1 o'clock P. M., at the same place.

4

Federal Building, Pittsburgh, Pa., 1
March 28, 1911, 1 o'clock P. M.

Pursuant to adjournment, the taking of evidence was then resumed, at 1 o'clock P. M., at the same place.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
on behalf of the United States of America.
MARSHALL A. CHRISTY, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Standard Sanitary Mfg. Co., 2
et al.

EDWARD M. BENTLEY, a witness of competent age, produced on behalf of the Standard Sanitary Mfg. Co., *et al.*, having been first duly cautioned and sworn by the Examiner, testified as follows:

DIRECT EXAMINATION BY MR. CHRISTY:

Q. Please state your name, address, age and occupation?

A. Edward M. Bentley; my residence is at Lawrence, New York; age, 52; occupation, mechanical and electrical engineer. 3

Q. Please state what experience you have had to tend to qualify you to testify as a witness and give testimony of an expert nature respecting patents for inventions and mechanical devices covered thereby?

A. I was educated at Yale College—

MR. GROSVENOR: Will you speak a little louder?

A. (Continuing): —where I was graduated in 1880. I was then for several years an Assistant Examiner in the United States Patent Office, where it was my duty to study and understand the various inventions submitted with applications 4
for patents, and to compare the same with such similar devices as I might find in the prior art, in order to ascertain the degree of novelty and patentability in the inventions submitted. I was then engaged for six years in the manufacturing business as one of the originators and engineers of the Bentley-Knight Electric Railway Co., which built a number of the first successful electric railways in the United States. During my connection with this company, I was engaged in the designing and constructing of mechanical and electrical ap-

1 paratus and in the installation of electric railway appliances. I also had charge of the matter of patents upon the inventions owned and controlled by the company, securing patents for such inventions and also considering the question of possible infringements upon patents owned by others.

In 1889 the Bentley-Knight Co. was absorbed by the Thomson-Houston Co., of Boston, which was soon absorbed in turn by the General Electric Co. of New York. I became connected with the Thomson-Houston Co. and the General Electric Co. and continued with them for five years, as manager of the department of inventions and patents.

2 Mr. GROSVENOR: It seems to me that all these qualifications stated are not material. The question here is not the validity of any patent or any patent question. It seems to me the qualification should be in relation to some expert knowledge of the making of enameled ware or something of that sort. My objection is that we are losing time. We have not here in question the consideration of the validity of the Arrott patent. That is established. We are not contesting that.

3 Mr. CHRISTY: As I read the Government's petition in this case, there is one question raised which has to do with the scope of patents, and to which some testimony should be addressed. As to the qualification of the witness to testify in this particular art, I expect to develop that in a succeeding question.

THE WITNESS (continuing): —During this time I was obliged to maintain practical familiarity with mechanical and electrical apparatus, and with the methods of manufacture. I also had charge of the matter of securing the patents on inventions made by the many engineers in the com-
4 pany's employ, and also supervised the apparatus of the company with respect to the patents which it owned and those which it did not own. I had charge of all technical matters involved in the extensive patent litigation in which the company was involved.

Since 1894 I have been practicing my present profession independently, and have been continuously engaged in studying and investigating mechanical and electrical apparatus and technical methods of many kinds, particularly with a

view to reporting upon and testifying in regard to the character, construction and action of such apparatus. 1

Q. Please state what experience, if any, you have had in connection with the subject to which this case relates, namely, the application to metallic sanitary ware of enamel in powdered form, and with particular reference to the Arrott patent, which has been referred to herein, and which is number 633,941?

A. My acquaintance with that matter began several years ago, when I was called upon to make a study of that art, particularly with reference to the Arrott patent, which at that time was involved in litigation which raised the question of the novelty of Arrott's device in comparison with the prior art, and the question of the validity and scope of the claims of the patent. In connection with my investigation of the subject I visited the plant of the Standard Sanitary Manufacturing Co., at Allegheny City, and observed the operation of the Arrott Dredger and also of the old hand methods of dredging which were superseded by the Arrott device. I made a series of experiments with the Arrott machine and also with the old hand methods, operating the old hand dredges myself and also the Arrott dredger As a result of my investigations, I gave testimony in the suit in which the Arrott patent was involved, expressing my opinion of the novelty and utility of the Arrott dredger. 2 3

In connection with my present testimony, I again visited the works of the Standard Sanitary Mfg. Co. and again observed the operation of the Arrott dredger and also of the old hand method.

Q. Please refer to Arrott patent No. 633,941 and state what you understand to be the invention described and claimed there?

> Mr. GROSVENOR: I object to that question. The patent specifications and the patent which is in evidence now speaks for itself, and the inventor therein states what his claim is. Any questions put to this witness is incompetent as to what the claim is. 4

A. The Arrott patent, which is No. 633,941, dated September 26, 1899, and which is known as "Petitioner's Exhibit No. 134," is entitled "Dredger For Pulverulent Material," and the patentee states that the invention "has relation to articles used for sifting and distributing powdered enamel-

ing material on the surface of bath-tubs and other vessels, commonly known to the trade as 'dredges.'" The patentee then describes the ordinary dredge as it was known prior to his invention—

Mr. GROSVENOR: I object to all this answer, particularly to the part that summarizes the description of the patent, and furthermore as it appears in the record that there were various hand dredges in use prior to this Arrott patent.

A. (Continuing): "The ordinary dredge consists simply of a sieve or other screen of proper mesh, having a handle of convenient length by which it is held and manipulated. As the pulverulent material does not readily pass through the sieve or evenly distribute itself spontaneously, it is necessary in dredging to continually agitate the dredge with the hand or with some instrument held in the hand, by tapping or striking the dredge, or by striking the dredge against the edge of the article to be enameled. This renders the labor of dredging or sifting very tiresome and slow, and requires considerable skill in manipulating the dredge so as to insure an even delivery of the enameling material."

Thus the patent acknowledges in itself the character of the prior device and its mode of use, and in contrast thereto the patentee proceeds to outline his new apparatus, and he says: "The object of this invention is to provide an automatic tapper or agitator, which will deliver a succession of rapid blows against the side or end of the dredge, and while relieving the workman of a great deal of labor, causes the pulverulent material or powder to be evenly distributed and to be uniformly discharged. The device which I employ for this purpose is preferably a pneumatic hammer, the piston or plunger of which is elongated and fitted to the hollow handle of the dredger, so as to reciprocate within the latter and strike the end or side of the dredge with every forward stroke."

In illustration of the invention thus outlined, the patentee shows in his drawing a sieve or sifter consisting of a cylindrical frame, the bottom of which is covered by a wire cloth screen. This sieve is provided with a handle of some length, one end of which is attached to the sieve proper and the other is connected by means of a metallic sleeve with the cylindrical body of a pneumatic hammer. This handle is hollow

and contains a rod which bears at one end against the frame 1
of the sieve, and at the other end enters the pneumatic hammer in a position to receive the blows of the plunger of the hammer, as the plunger reciprocates under the influence of the air-pressure.

> Mr. CROSVENOR: Counsel for the Government repeats his objection to this testimony as stated above. The drawings referred to by the witness are, of course, part of the patent specifications known as Government's Exhibit No. 134, and the description of the drawings and the method of operation of the several parts thereof is stated in the specifications, that is, in Petitioner's Exhibit No. 134. 2

THE WITNESS (continuing): The pneumatic hammer is supplied with air by a flexible pipe leading to a compressed air reservoir, and a suitable valve marked E in the patent drawing is provided within easy reach of the workmen to control the admission of air and regulate the force of the blow.

The patentee then describes the advantages in a general way to be derived from the use of his invention, and he says: "By the use of this device the operator is enabled to distribute and deposit the enamel more quickly and evenly, and has 3
the use of both hands to carry and manipulate the dredger, relieving him of a great deal of hard work and enabling him to turn out more work in a given time than is possible by the use of the present style of dredge. * * * In the operation of the application of enamel in the powdered form, the dredge or sifter has always been carried by the operator in one hand, while the necessary jar to produce sifting was communicated either to the handle of the sifter or to the sifter itself by some instrument in the other hand or in some instances the sifter is held in both hands by one operator while an assistant produces the necessary jar to cause sift- 4
ing, and it is to this class of apparatus and operations that my invention relates and applies."

The patentee then says, in effect, that there is nothing new in the pneumatic hammer itself which he uses; and then he summarizes this invention in the claims of the patent, which are supposed to define the scope of the patent and to determine the substantial organization which is to form the exclusive property of the inventor. Since these claims are

of importance in considering the patent, they may be here quoted:

"Having thus described my invention, what I claim as new is—

"1. A dredger or sifter consisting of a screen or sieve and a supporting handle, in combination with a pneumatic agitator attached to the dredger and adapted to vibrate the sieve, substantially as described.

"2. A dredger or sifter consisting of a sieve and a handle in combination with an automatic agitator secured to and carried by the dredger and adapted to agitate or vibrate the same, substantially as described.

"3. A dredger or sifter comprising a sieve and handle and an automatic agitator secured thereto, with means for controlling the operation of said agitator, substantially as described."

I might call attention to the fact that claim one describes the agitator as "a pneumatic agitator," and consequently that claim would not be infringed by an agitator which was not of the pneumatic type. In claims two and three, however, there is no such limitation as to the kind of agitator to be used, except that it is to be "an automatic agitator." These claims two and three would, therefore, cover an agitator such as was not of the pneumatic kind, for instance an electric agitator.

Mr. GROSVENOR: I object to all this testimony for the reasons above stated. I object particularly to the last answer as being an opinion of law, and of course, therefore, incompetent.

THE WITNESS (continuing): I also call attention to the fact that claim three includes as one element of the organization "means for controlling the operation of said agitator," which is, therefore, a limitation in claim three which is not found in claims one and two.

BY Mr. CHRISTY:

Q. While Mr. Grosvenor has properly suggested that the validity of this Arrott patent is not here involved, simply in order to throw light on its scope and meaning, I wish you would compare the operation of the Arrott dredger with the operation of dredging enamel by the old

hand method, not for the purpose at this time of pointing out any advantages in the one over the other, but to distinguish their methods of operation. 1

Mr. GROSVENOR: I suggest that counsel make his question more specific. There have been a number of hand methods and dredges desribed in the record, and it seems to me a general reference to all of them as one type is not sufficiently clear.

Mr. CHRISTY: I do not altogether see the distinction, but for the purposes of this question, you may consider it as directed to the two hand dredges in evidence here, known as the short-handle dredge and the long-handle dredge. 2

Mr. GROSVENOR: I now make my objection to any testimony as to the effect of the dredges, hand and automatic, by this witness. He has not proven himself as an expert in the making of enameled ware; his expertness goes to the determining of patents and whether certain inventions are novel and patentable, but he has not shown yet any qualification respecting the manufacture of enameled ware and the processes involved. A visit to the Allegheny factory certainly does not qualify him to testify as an expert. 3

Mr. CHRISTY: The question does not ask for effect or results, but it asks for *modus operandi.*

A. The old hand dredges referred to consisted merely of a sieve with a handle projecting therefrom, this handle being in some cases longer and in other cases shorter. In operation, the powdered enamel, which is something like flour in form, but much heavier and more compact when in a mass, was placed in the sieve, and the operator then lifted the sieve by the handle, using his left hand and passing the projecting end of the handle back under his elbow— 4

Mr. GROSVENOR (interrupting): I object to all of this testimony and these descriptions. This witness has not shown any knowledge of or experience with the method used. The record shows that the hand method was abandoned at the time that he went to the Allegheny factory, and any single instance when he may have observed it there used for the purposes of an experiment does not qualify him as an expert.

1 He has no special knowledge of or qualification in this matter.

Mr. CHRISTY: While not intending to be offensive, Mr. Christy suggests that the substance of this objection has already been made several times with all rights reserved, and respectfully declines to enter into any argument on the merits of the objection at this time. He submits that the witness should not be continually interrupted by repeated objections of this kind.

Mr. GROSVENOR: I state the objection as an objec-
2 tion, not as an argument. An objection can never be general, but must always be specific.

THE WITNESS (continuing): In his right hand the operator has what is known as a beater, consisting of a fork or loop of heavy wire with a short wooden handle, so that the operator's hand comes up close to the loop or fork of the beater. The loop or fork of the beater embraces the handle of the dredge, and by working the beater up and down with his hand, the operator can deliver blows to the handle of the dredge alternately on its upper and under
3 sides. Assuming that the article to be enameled is a bath tub, it is brought out from the furnace in a red hot condition, and the operator is obliged to work in the immediate neighborhood of this extremely hot mass of iron. He is, therefore, compelled to use an asbestos mitten on the hand which he uses for beating, also an asbestos apron and a shield over his face. When the tub to be enameled is in position, the operator approaches it, and holding the sieve over the tub proceeds to beat on the handle of the sieve with his beater, and thereby causes a puff of enamel to fall from the bottom of the dredge at each blow of
4 the beater. In this way he passes the sieve over the different portions of the tub, constantly working the beater with his hand, and thereby covers the tub with a layer of enamel of as uniform thickness as possible. The enamel is white, and wherever it falls upon the red hot bathtub the color of the tub is changed to white by the falling of the enamel thereon, so that the operation of coating the tub with enamel can be easily observed.

Mr. GROSVENOR: With permission of counsel for the defendants, I wish to make an interruption.

What factory is he discussing now, the Allegheny factory? 1

Mr. CHRISTY: Just go ahead and answer that.

THE WITNESS (continuing): I was speaking of the Allegheny factory.

As regards the Arrott dredger, it will be remembered that the dredger is automatic, and my investigation of it led me to believe that the action of the sieve itself was quite materially different in the case of the automatic dredger from what it was in the hand dredge. For example, I placed the handle of an automatic dredger in a vise and held it therein so securely that there could 2 be no possible bodily movement of the handle of the sifter. When the device was thus gripped in the vise, I found that it would operate exactly as well as when the handle was free, that is, no enamel whatever would fall through the meshes of the sieve so long as the pneumatic agitator was not in action, but the moment the valve of the pneumatic agitator was opened, the enamel would begin to flow from the sieve, indicating that the dredger was—so to speak—made alive within itself. When the pneumatic agitator was thus operated without any enamel in the sieve, 3 there was a distinct vibration of the meshes of the sieve, which could be detected by the tips of the fingers. This indicated to me a molecular transmission of the blows of the agitator through the handle, thereby setting the wires of the mesh into a continuous vibration. This vibration of the wires acted, I believe, to undermine and dislodge the minute particles of enamel lying upon the sieve and causing them to flow in a steady stream through the meshes of the sieve, this action being uniform throughout the entire mesh of the sieve.

On the contrary, I believe with the hand dredge there 4 is simply a series of intermittent blows which dislodge the enamel and cause it to flow through in puffs, by reason of the impact of the beater against the body of the sieve itself. The practical difference is that with the automatic device there is a continuous and uniform fall of the powdered enamel from the dredge, in distinction from the intermittent and non-uniform delivery of enamel by the hand dredge. In operation the workman uses both hands to operate the dredger, and moreover is not obliged to hold

1 one hand in a strained and fixed position against his side to support the weight of the machine. Having both hands to manipulate the dredger, and having both arms free, he moves the dredger over the bath tub, or other article to be enameled, without constraint, while the flow of enamel from the dredger is uniform and continuous, and independent of any action by the operator, except as he may start and stop the pneumatic agitator by the pressure of his thumb. Those are the chief differences in structure and in mode of operation the two devices under comparison.

By Mr. CHRISTY:

2 In paragraph 4 of the petition herein, reference is made to three patents, which are characterized as "competing patents," these being the Arrott patent, to which you have referred, a patent to Dithridge No. 949,625, and a patent to Lindsay No. 939,918; have you also read these Dithridge and Lindsay patents, and do you also understand the devices therein shown and described? A. Yes, sir.

Q. Please refer to the Dithridge patent and state whether, if one should use the device therein shown and described, he would or would not, in your opinion, also be practicing the
3 invention described and claimed in the Arrott patent as you state it and understand it?

Mr. GROSVENOR: I object to this question for the reasons stated above, that the question addressed to this witness calls for an opinion, and for other reasons above stated.

A. The Dithridge patent is dated February 15, 1910, and therefore relates to an invention subsequent to that of Mr. Arrott. The device of the Dithridge patent is simply a modification of the Arrott dredger, and preserves all of the
4 essential characteristics and qualities of the Arrott dredger, the only difference being in the mode of connection between the pneumatic hammer and the sieve proper. It is the purpose of Dithridge to have the pneumatic hammer portion readily detachable from the sieve portion, and to that end he provides a socket on the rear end of the handle of the dredger, into which fits a projection or nozzle on the end of the pneumatic hammer, and when the nozzle is thus engaged in the socket, he prevents them from separating by having the—

By Mr. Grosvenor: 1

Q. Are these notes, which you are using here, in your testimony?

A. I have not used them before. These are a memorandum of this Dithridge patent. You can see what they are. I was not quoting from them, either. What was the last thing I said?

Stenographer then read the last answer of the witness.

A. (Continuing): He prevents them from separating by having both the socket and projection gripped by the hand of the operator.

2

Mr. Grosvenor: I object to the use of these notes here. It does not seem to me that the witness should use notes from which to testify. There certainly should be some foundation laid for the use of the notes.

Mr. Christy: If you have any further explanation of these notes, Mr. Bentley, you can give it; and if Mr. Grosvenor still objects, I suppose there is no reason why you should use them.

The Witness: Before coming into the examination room I had written down on two small sheets of paper a brief outline of the essential likeness between the device of Arrott and that of Dithridge. This was merely to save time by having the matter of the similarity formulated on paper; I have no objection to going on without the notes, although it may take a little more time, and cause my statement to be more diffuse. 3

When the two parts, to wit, the pneumatic hammer and the dredger, the nozzle of the hammer entering the handle of the dredger, are thus united and held together by the hand of the operator, they are secured to each other as effectively for practical purposes as they are in the construction of Arrott. Both in the Arrott device and in the Dithridge device the essential elements of the organization are the screen or sieve, the supporting handle, and the pneumatic or automatic agitator attached to the dredger and adapted to vibrate the sieve. These are the essential elements which make up the Arrott organization, and they are likewise the essential elements which make up the Dithridge organization. It is true that in the Dithridge arrangement it is easier to take the machine apart by re- 4

1 moving the hammer portion from the sifter portion, but so long as the Ditheridge device is in operation, assuming it to be a practically operative device, it must necessarily contain the same features and the same elements as are found in the organization of Arrott. It is, therefore, my opinion that there is no substantial difference between the two devices, and that the later device of Dithridge would be subordinate to the earlier device of Arrott, and embraced by the Arrott patent.

By Mr. Christy:

2 Q. Will you please now take up the Lindsay patent in the same way, and state whether or not, in your opinion, if anyone would use the device therein described, he would also use the Arrott patent as you have stated it and understand it?

Mr. Grosvenor: I make the same objection to this question as to the last question addressed to the witness.

A. The Lindsay patent is dated November 9, 1909, and is therefore subsequent to the Arrott invention and the Arrott patent. The Lindsay device is also an automatic
3 dredger containing a screen or sieve and a handle and an automatic agitator secured to and carried by the dredger, and adapted to agitate or vibrate the same. The automatic agitator of Lindsay is an electro-magnet, operated by an alternating or broken electric current, and therefore having a vibrating armature, which is so connected with the wire mesh of the sifter as to impart its vibrations thereto and so produce the same effect, in substance, that results from the pneumatic agitator of Arrott. In my opinion this does not create any substantial difference between the device of Lindsay and that of Arrott, the electric vibrator of Lindsay
4 being an equivalent for the pneumatic agitator of Arrott, and both of them falling within the class of automatic agitators such as Arrott refers to in his patent claim. To my mind no one could employ the Lindsay dredger without also employing the substance of the Arrott invention.

Examination Suspended.

At this point the taking of evidence was adjourned until the following morning, March 29, at 10 o'clock, at the same place.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1
FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Federal Building, Pittsburgh, Pa., 2

March 29, 1911.

Pursuant to adjournment, the hearing was resumed at the Federal Building, in Pittsburgh, Pa., on this 29th day of March, 1911, at 10 o'clock A. M., and evidence taken on behalf of the defendants, as follows:

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
on behalf of the United States of America.
MARSHALL A. CHRISTY, Esq., 3
on behalf of the Standard Sanitary Mfg. Co., *et al.*

EDWARD M. BENTLEY, a witness heretofore produced and sworn on behalf of the defendants, resumed the stand for continuation of direct examination, and testified as follows:

DIRECT EXAMINATION BY MR. CHRISTY (continued):

Q. In your last answer given yesterday, you stated generally your reason for considering the automatic agitator of the Lindsay patent an equivalent for the automatic agi- 4
tator of the Arrott patent. Will you please explain this equivalency a little more fully?

A. There are two factors in that question, the first being the fact that the use of an electrical vibrator—

MR. GROSVENOR: Of course, the objection that I made yesterday applies here.

A. (Continuing): —in place of a pneumatic vibrator

1 involves merely a substitution of one well-known kind of motive power for another to produce the to and fro action of the vibrating element.

The second factor is that the electric vibrator of Lindsay is intended to do exactly what is done by the pneumatic vibrator of Arrott, to wit, to produce a local vibratory excitation of the wires which form the sifting mesh on the bottom of the dredger. I have heretofore pointed out that the Arrott dredger did not depend upon shocks or jars transmitted to the body of the enamel contained in the dredger. On the contrary, the enamel in the dredger re-
2 mains in a quiescent condition and the Arrott dredger operates because the local vibration of the wires of the sifter act to gradually undermine the quiescent mass of enamel resting upon the mesh of the sifter, and thereby work the fine particles of enamel down through the apertures between the wires. In the Lindsay apparatus especial attention is directed toward the securing of such peculiar local action of the wires of the sifting mesh. That is to say, Lindsay applies his electric vibrator to a spider of metallic rods which engages directly the wire mesh of the sifter. The action of the electric vibrator is, therefore,
3 entirely local to the wire mesh, and it is Lindsay's particular purpose to have it so, and to avoid any vibration of other portions of the dredger. In view, therefore, of the fact that both devices are intented to produce the same peculiar action of the wire mesh of the dredger, and that the substitution of an electric vibrator for a pneumatic vibrator is merely the use of one sort of motive power instead of another, my conclusion is that Lindsay is simply using the Arrott dredger with alterations which do not affect the essential character of the apparatus.

Q. In testifying yesterday you referred to some demon-
4 strations which you made with the Arrott dredger, in placing it in a vise and operating it. I wish, if you can, that you would produce some photographs which accurately show these demonstrations as performed by you, and if you can also do so, I wish you would produce additional photographs showing hand dredging and pneumatic dredging as you witnessed it on the occasion to which you have referred.

A. The experiment of operating the Arrott dredger while it was clamped in the vise was performed in two

ways. In the first place, the extreme rear end of the dredger handle, formed by the pneumatic hammer, applied thereto was clamped securely in the vise— 1

Mr. GROSVENOR: I do not see the materiality of this question.

A. (Continuing): —and while the handle was thus clamped, the pneumatic vibrator was started in action and the—

Mr. GROSVENOR (interrupting): I make my objection to all this evidence as immaterial, incompetent and irrelevant, having no bearing on any of the issues in this case. 2

A. (Continuing): I was saying that when the dredger was thus clamped in the vise and the sieve portion thereof supplied with enamel, the pneumatic agitator was set into operation. The photograph which I here produce shows this condition (indicating). It will be observed that the photograph shows a steady and continuous flow of enamel from the dredger.

Thinking that this might still involve some bodily vibration of the sifter due to the resiliency of the handle between the vise and the sieve, I repeated the experiment but applied the vise close to the sieve, as appears in this second photograph which I here produce. This second arrangement made no perceptible change in the operation of the apparatus. 3

As regards my experiments comparing the operation of the automatic dredger of Arrott with the prior hand dredge—

Mr. GROSVENOR: I object to that term of description "prior hand dredge," the photograph showing the short handle dredge which, as testified to by witness, was abandoned five or six years before the adoption of the Arrott dredger. 4

A. (Continuing): I have here two photographs showing respectively the prior hand dredge in operation and—

Mr. GROSVENOR: Note the same objection.

A. (Continuing): —and also the automatic dredger. Turning to the first photograph of the hand dredge, it

1 will be observed that the operator is grasping the handle of the dredge with his left hand, the end of the handle projecting back under his elbow, and his arm being held rigidly against his side in a strained position. With his right hand he grasps the beater, which is in the form of a wire loop surrounding the handle of the dredge, and which the man works up and down as rapidly as possible, thereby applying the blows to the top and bottom sides of the handle alternately. The sieve of the dredge is held over the bathtub, shown in the photograph as mounted on a tilted table, having just been drawn from the furnace, the door of
2 which is shown in the background.

Turning to the second photograph, which shows the operation of the automatic dredger, it will be observed that the apparatus is held by the operator in both hands, and that both of his arms are free to swing the sifter from side to side to guide it over the successive portions of the tub. With his left hand, the operator grasps the handle of the dredger about midway of its length, and with his right hand he grasps the rear end near the pneumatic agitator, with his thumb on the throttle valve of the agitator, so that he can start and stop the flow of the enamel at will.

3 I call particular attention to the difference which appears in the photograph between the flow of enamel from the hand dredge and the flow from the automatic dredger, the difference being quite apparent even in the photograph. These two photographs represent the comparative operations of the two devices as I observed them in the course of my investigation of the subject.

Mr. CHRISTY: Defendants' counsel offers in evidence the photographs produced by the witness, referred to in his last answer, they being respectively as follows: the photograph showing the handle of the
4 dredger clamped in a vise at its outer end is marked "Defendants' Exhibit No. 4"; the one showing the handle of the dredger clamped in a vise at its inner end is offered as "Defendants' Exhibit No. 5"; the photograph showing the hand dredge is offered as "Defendants' Exhibit No. 6"; and the one showing the pneumatic dredger is offered as "Defendants' Exhibit No. 7."

Photographs referred to were then marked and filed as Defendants' Exhibits Nos. 4, 5, 6, and 7. 1

Mr. GROSVENOR: The Government objects to all these photographs as incompetent, immaterial and irrelevant, and furthermore as incompetent for the purpose of comparison of the two methods, namely, the hand method and the air method, the picture of the hand dredge being of a hand dredge which the record shows was abolished long prior to the invention of the automatic dredger, this being shown by the testimony of George Shield, the enameling foreman of the Standard Sanitary Mfg. Co. at New Brighton. 2

Mr. CHRISTY: Defendants' counsel does not wish his silence heretofore in connection with statements of the same alleged facts as that last above to be construed as acquiescing in their accuracy. So far as the testimony of this witness is concerned, he was testifying as to observation at the Standard plant at Allegheny.

By Mr. CHRISTY:

Q. Basing your testimony on your familiarity with manufacturing operations in general, and particularly on your study and observation in this art, will you please state your opinion as to the status and practical standing of this Arrott invention in enameling operations. 3

Mr. GROSVENOR: Note the same objection as heretofore made, that is, that the witness has not shown proper qualifications as an expert and no knowledge of the business other than that obtained by the observation of certain experiments at the Allegheny factory with respect to which he has testified. Therefore, he has no special experience and knowledge qualifying him to give an opinion. Further, I object to the question as being too broad in the use of the term "enameling operations." 4

Mr. CHRISTY: I thought the question would be easily understood, but I have no objection to saying that, of course, it is directed to the operation of spreading powdered enamel on cast iron sanitary ware.

A. My experience in the study of manufacturing opera-

1 tions, which now covers a period of some thirty years, leads me to think that the proper method of estimating the effect of an invention like that of the Arrott dredger, upon the particular art to which it pertains, is to consider briefly some of the general principles which apply to all manufacturing operations, particularly as regards the results following from the introduction into the art of an invention that gives rise to a change in the methods of manufacture previously followed.

One general principle is that the magnitude of the results which follow the advent of some invention into an art
2 is independent of the complexity or mangitude of the invention *per se*. Some of the most important advances in an art are often produced by an invention which is in itself a matter of extreme simplicity. For example, I am at the present time engaged in a matter wherein the art of manufacturing pressed glass articles, such as tumblers and jars, has been practically revolutionized by the very simple expedient of allowing a continuous stream of molten glass to flow from an aperture in a furnace containing a large body or pool of such molten glass, and periodically cutting off sections of this flowing stream of glass at a point some
3 inches below the point at which it emerges from the furnace. Prior to this expedient, the only known method of detaching small batches of glass from a large mass in the furnace was to dip them out by means of a ladle or an iron rod known as a "punty." This process had to be performed by hand except at the expense of very costly and complicated machinery. By the simple expedient just mentioned, it became possible to automatically cut off the small batches of glass from the flowing stream by means of machinery, and deliver them automatically to molds where the pressing takes place automatically, the completed ar-
4 ticles being automatically delivered from the machine and automatically transferred to the annealing furnace. This is one example of a case where an expedient, very simple in itself, has been the means of producing a revolutionary advance in an art.

Still another one of the many examples such as this that have come under my observation is in the electrical art, wherein one of the most useful inventions ever made resided merely in the placing of an electro-magnet adjacent to the terminals of an electric switch, whereby any electric

are produced at the terminals when the switch is opened, that would otherwise fuse and burn the terminals, is instantly extinguished by the action of the magnet. This very simple device opened the way for the handling of large electric currents by means of switches, and is employed in a large portion of the electrical apparatus now in use. It is present, for instance, in every electric railway car in the world, it being necessary to control the speed and power of such a car by means of a switch that is dependent upon the presence of such a magnet to exstinguish the arcs at the switch contacts. 1

I might give many illustrations within my personal knowledge of large and important results in an art, which have been due to some expedient, which, in itself, was extremely simple. 2

The second general principle to which I would refer is that the elimination of hand work and the substitution therefor of mechanical operation is always productive of an advance in a manufacturing art. The hand work in general is slow, irregular and expensive, and oftentimes involves arduous physical labor. One example of this is in the art of manufacturing pressed glass articles to which I have referred. To provide the separate detached batches of glass by hand was slow, irregular and expensive. One operation which I have particularly in mind previously required the continuous labor of four men, but is now performed much more expeditiously and uniformly by a machine, which requires only the occasional attention of one man. 3

A third principle to which I might refer is that the advent of an invention which creates a marked improvement in a manufacturing art, establishes a new standard to which the art generally must conform. Indeed, I would say that a large part of my work originates in the efforts of the art to keep pace with some new standard of speed, cheapness or quality which has resulted from the introduction of some invention that has produced an improved mode of production. This does not mean that the old methods are inoperative, or that articles cannot still be produced by such old methods, but it means that the art has advanced to a new standard or has set a new pace which the old methods are unable to keep up with. 4

Now, applying these general principles to the matter in hand, it is clear to me that while the Arrott dredger is,

in itself, a small article, and the application thereto of a pneumatic agitator to supplant the manual agitation or jarring is not in itself a complicated expedient, yet it is one capable of producing large results in the art as a whole. And while I am not in a position to state the improvement which it has produced in terms of dollars and cents, my experience assures me that it must necessarily have produced results of an important and extended character.

In the second place, it is obvious that the Arrott dredger involves the substitution of mechanical for manual operation in one important step in the process of manufacturing bath tubs and other enameled ware. It was obvious to me that the manual operation involved arduous physical exertion on the part of the operator. One arm was in a cramped and strained position, and the guiding of the dredge over the surface of the bath tub involved largely a movement of the body in contrast to the free and unrestrained movement of the arms only. The application of the enamel was slow, and when it is remembered that the bath tub, after being withdrawn from the furnace, is rapidly losing its heat, and will in a short time become so cold that the enamel will not adhere to it, it is evident that a more rapid application of the enamel, so that as much as possible will be applied to the tub before it becomes chilled, is a matter of importance. In the case of the manual dredging, the outflow of the enamel is not continuous, but is in a series of puffs, it being impossible for the operator to work his beater fast enough to produce a steady flow, while, moreover, the rapidity decreases as the operator becomes wearied, and the intermittent flow becomes more pronounced. Since the operator is at the same time moving the dredge over the bath tub, the deposit of enamel tends to become irregular, being thicker at the instant when a puff or jet of enamel falls from the dredge, and thinner at the periods between the succeeding puffs. This operation must also be performed in an oppressively heated atmosphere, which renders the labor more exhausting, particularly in the summer time. It was, therefore, evident to me that the elimination of this hand labor and the substitution therefor of mechanical labor was a matter that would inherently and of necessity result in a marked improvement in the art. Indeed, from my knowledge of such matters I expect that

some invention will be made that will eliminate hand labor entirely in the enameling of bath tubs and small ware. Knowing the advantages which would result from such an invention, and knowing the eagerness with which manufacturers are inspired by the patent system to produce such inventions, I am confident that the time is not distant when hand labor will be entirely eliminated from this particular art. 1

In the third place, it is my observation that the Arrott invention has created a new standard in this particular art, and as in all arts, the creation of such a new standard renders the prior methods obsolete, although they still remain practical. For example, it is still possible to propel street cars by horses, and it is still done in some cases, yet the introduction of the electric motor as a propelling agency for street cars has created a new standard that has rendered horse propulsion obsolete. 2

So, it is still possible to enamel bath tubs by the old hand process, although it would not conform to the more modern standards resulting from the mechanical in distinction from the manual dredge.

One of the ways in which an invention frequently acts is to largely increase the output of a given plant calling for a given investment. If a manufacturer with the same investment in his plant can double the output of that plant, it is obvious that a marked advantage is gained. In the case of the enameling of bath tubs, it would appear to me that the use of the Arrott dredger would enable the manufacturer to produce from the same set of furnaces a materially greater output of enameled bath tubs. I also believe that the quality of the output is greatly improved at the same time, there being thus a gain in quantity as well as quality secured from the same set of furnaces. This also illustrates one of the ways in which the effects of an invention, simple in itself, are ramified throughout the entire establishment, some of the secondary effects being even more important than the immediate effect which the invention has. 3 4

I am, therefore, convinced that the Arrott dredger not only provided a distinct relief to the operators engaged in the old manual method, but also resulted in the production of better and cheaper enameled articles, and marked a distinct step in advance in this particular art.

Mr. CHRISTY: That will be all.

1 CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Bentley, will you state your entire experience in visiting factories manufacturing sanitary enameled iron ware?

A. As I remember it, I made one visit to the factory of the Standard Sanitary Manufacturing Company in Allegheny City, and spent a day there, at the time of the suit which involved the Arrott patent. I made a second visit some weeks ago and spent about half a day observing again the machine and its operation. That is all.

Q. Have you been in any other factories? A. No.

2 Q. Have you visited any of the other plants of any of the other manufacturers? A. None.

Q. This first visit that you made to the Allegheny plant was several years ago, at the time of the suit respecting the Arrott patent, is that right? A. Yes.

Q. And was for the purpose of enabling you to testify intelligently about the patent and the dredges in that case?

A. Yes.

Q. This second visit several weeks ago was in order to enable you to testify in this suit?

A. Yes, to the extent that it might refresh my ac-

3 quaintance with the matter.

Q. Have you given any study to this subject of the making of sanitary enameled iron ware except in so far as these two visits enabled you to study the use of the Arrott dredger and the hand dredge?

A. A considerable amount of studying was incidental to those visits in the way of looking over the prior art as it was shown by patents and by the testimony in this suit, while I also examined at great length the operators and others familiar with the processes.

Q. You mean by the operators those who were enamel-

4 ing tubs and other ware on the occasion of your two visits?

A. Yes.

Q. Your study, then, of this subject has been confined to the subject of dredgers, has it not? You have not studied the making of the powder, have you, or the making of the slush coat, or the making of the patterns or the moulds?

A. Not particularly. I went through the portion of the factory devoted to the manufacture of the enamel and the

application of the preliminary coats, and also to the foundry wherein there was nothing of particular novelty. 1

Q. This was done on the occasion of both these visits?

A. That was done at the first visit, not at the second.

Q. Am I to understand you as saying that there was no particular novelty, to apply that to the making of the enameling powder?

A. No, I was referring merely to the foundry.

Q. Do you know whether or not, as a matter of fact, the making of the enameling powder is one of the secrets of the business?

A. I understand that there may be some small secrets about it. 2

Q. What do you mean by "small secrets," not important secrets?

A. I mean that the general process of producing the enamel is old and well known, but that individual manufacturers may have some special steps or operations which are kept secret.

Q. What do you mean by "steps or operations?"—the ingredients of the powder?

A. It may be in the ingredients, and most likely is, although there may be some peculiar methods of mixing or heating or other feature. 3

Q. You said that the general process of producing the enamel is old and well known; what do you mean by that?

A. I understand that the general method of producing powdered enamel was old and well known. At the time of my visit there were no secrets maintained as to the general steps of the process, such as the melting of the ingredients, the cooling of the molten material into slag and the grinding of it into powdered form.

Q. You are speaking of the method of operation; were you given the formula for making the powder? A. No. 4

Q. Was anyone there with you who asked for the formula? A. No.

Q. Can you say, then, that was not maintained a secret at that time?

A. No, the formula, so far as I know, may have been maintained secret.

Q. How about the slush coat; do you know whether the formula for making the slush is one of the secrets of the business? A. I do not.

1 Q. Do you understand that the making of the slush is one of the important factors of the business? A. Yes.

Q. How was the slush put on, do you know or do you recall? A. My recollection is it was painted on with a brush.

Q. With a brush? A. Yes, with a brush.

Q. Did you make any analysis of the pig iron which goes into the making of the cast iron? A. No.

Q. You did not make any study of that subject?

A. No.

Q. In fact, the purpose of your visit was simply to ob-
2 serve the operation of the Arrott dredger as compared with the operation of the hand dredges, which was shown to you at that time?

A. Yes, and to acquire such other information as I could from the employees and officers of the company.

Q. Referring to this picture of the old hand dredge, which was introduced in your direct examination, is that a picture of the hand dredge which was operated that day? A. It was.

Q. Had you ever seen the hand dredge before that time?

A. I think I had, although I am not now certain about it.

3 Q. Did you know that, as a matter of fact, that was not the latest form of hand dredge in use prior to the invention of the Arrott patent?

A. No, I understood that it was the last that had been used by the Standard Company, and in fact it was one of the actual dredges which they had happened to keep.

Q. Have you read any of the testimony in this case?

A. No.

Q. Have you read the testimony of George Shield?

A. I have not.

Mr. GROSVENOR: He was a witness for the defend-
4 ants; enameling foreman for the Standard at New Brighton.

Examination Suspended.

At this point a recess was taken for one hour and a half.

After Recess.

EDWARD M. BENTLEY, resumed the stand for continuation of cross examination, and testified as follows:

CROSS EXAMINATION BY Mr. GROSVENOR (continued):

Q. George Shield produced this long handle dredge which is known as "Petitioner's Exhibit No. 279" and testified that this dredge was in use at the New Brighton factory until the year 1901. Did you make any experiments with this form of dredge in 1907 on the occasion of your first visit to the Standard Sanitary Manufacturing Company's plant?

A. No, I assumed that its operation was substantially the same as the dredges with shorter handles used at the Standard works.

Q. Did you see this form of dredge at the Standard works in 1907?

A. I do not now remember, although I was acquainted with it at that time.

Q. In 1907?

A. In 1907.

Q. Now, this visit a few weeks ago, was for the purpose of seeing a bath tub enameled with this long handle dredge, is that right?

A. Yes, it was used there at that time.

Q. Was any other hand dredge used on your visit a few weeks ago other than this long handle dredge?

A. I think not as I remember it.

Q. Now, on the prior occasion the only one used was the short handle dredge, is that right? A. Yes.

Q. I show you this exhibit, being the picture of the short handle hand dredge, which is marked "Defendants' Exhibit No. 6." You pointed out certain protections which the workmen used in using that dredge; do you know whether or not, as a matter of fact, those protections were discarded by the workmen who used the long handle dredge?

A. I think it appeared in the suit on the patent that some, at least, of the protective clothing was not necessary when the long handle dredge was used; but that is my only knowledge of the matter.

Q. Now, how many bath tubs were enameled with the long handle dredge when you were there a few weeks ago?

A. I do not now recall that there was more than one.

1 Q. Your answer is one then, is it?

A. I am not positive about it, although I distinctly recollect one.

Q. You do not recollect more than one? A. No.

Q. On your prior visits in 1907, how many bath tubs were enameled with the short handle hand dredge?

A. I do not remember.

Q. Was it more than one?

A. I have no recollection on the subject, as it was some ten years ago.

Q. It was how many years ago?

2 A. Nearly ten years ago.

Q. I thought you testified that your visit to the Standard plant was in 1907?

A. Yes, I should have said about five years ago instead of ten.

Q. As I recall your testimony this morning, you have not seen tubs made anywhere else except on these two occasions, is that right? A. That is right.

Q. Returning now to the Arrott patent, is that a patent on a machine? A. Yes.

Q. The dredger made according to the specifications of

3 the Arrott patent is, then, the patented article?

A. Yes, considering the machine as an article. Technically there is a distinction between a machine and an article of manufacture in patent practice.

Q. What is a patented process?

A. A patented process is a series of acts performed on some material, speaking generally.

Q. The Arrott patent is not a patented process, is it?

A. No.

Q. It is a patented machine? A. Yes.

Q. Or a patented tool?

4 A. That might be said of it, although the technical term is a "machine."

Q. Referring to these other two patents, is the Dithridge patent a patent on a machine? A. Yes.

Q. There is no patented process there, is there? A. No.

Q. Is the Lindsay patent a patent on a machine?

A. Yes.

Q. Is there any patented process covered by that patent?

A. No.

Q. Now, I read to you from the Petitioner's Exhibit No.

9, being a copy of the license agreement executed between 1
Edwin L. Wayman and the various corporation defendants.
"Paragraph one: the licensor hereby grants to the licensee,
"subject to the provisions hereinafter contained, a non-ex-
"clusive license to practice in the manufacture of sanitary
"enameled iron ware the processes patented in said several
"patents, to make and use in such manufacture, machines
"and devices patented in said patents, and to use and sell
"goods so made." As I understand your testimony, none of
the three patents to which I have referred includes a patented
process? A. No, technically speaking.

Q. Have you ever examined the sanitary enameled iron 2
ware manufactured by other manufacturers?

A. No, not particularly.

Q. I mean, other than the Standard Sanitary; have you
at all?

A. No, except that I might have seen it incidentally.

Q. In this suit respecting the Arrott patent, in which you
testified as a witness three or four years ago, the point at
issue was whether the Arrott patent covered something which
was patentable, is not that right? That was one of the main
issues?

A. Yes, if you refer to the question of the patentable 3
novelty of the Arrot device in view of the prior art.

Q. Your testimony was largely in order to establish that
it was something, or that it was an idea or object which was
patentable?

A. Yes, that was the primary purpose of my testimony.

Q. You testified on direct examination that in your judg-
ment the Dithridge and Lindsay patents infringed the Ar-
rott patent? A. Yes, that was the substance of it.

Q. There has been no judicial decision to that effect?

A. Not to my knowledge.

Q. Does not the fact that the patent office in Washington 4
allowed patents to Dithridge and Lindsay indicate that in
the opinion of the Patent Office the two patents did not in-
fringe the Arrott patent?

A. No, the Patent Office never considers questions of in-
fringement in granting a patent; they merely consider the
question of its individuality, and it may infringe one or more
outstanding patents; but such infringement is not within
the province of the Patent Office to consider.

1 Q. If the idea or invention has already been patented, will they issue another patent?

A. Yes, provided the claims of the second patent are not coextensive with the claims of the patent already issued. For example, when I was in the Patent Office we issued a great many patents on telephones; all of which were subject to the outstanding broad patent of Bell, and infringements thereof.

Q. Did you know they were infringements at the time they were granted? A. Yes.

Q. You have not made a study of the enameling powder
2 which must be used; I understood that was your testimony this morning? A. That was correct.

Q. Nor of the ingredients of the slush coat? A. No.

Q. Nor of the temperature to which the cast iron tub must be brought after the slush coat is applied?

A. Not particularly.

Q. Of course, except by your observation at the time of those two visits?

A. I only observed that the bath tubs were at a red heat, indicating a temperature of perhaps 1200 degrees.

Q. Did you observe whether, in the case of the applica-
3 tion of the slush coat and the firing thereafter, as between the case where the enameling powder is applied and the tub is then fired, in which case the tub is brought to a higher degree of temperature, you have not made a study of those subjects, have you? A. No, I have not.

Q. Now, are you able to state, then, as compared with those steps in the manufacture of the enameled article, just how important the use of the Arrott dredger is?

A. No, if you refer to the matter of the primary slush coat and the temperature required to bake it on to the tub.

Q. In your testimony this morning, in response to the
4 final question by Mr. Christy you testified at length. After referring to three general principles, you state: "Now, applying these general principles to the matter in hand, it is clear to me that while the Arrot dredger is, in itself, a small article, and the application thereto of a pneumatic agitator to supplant the manual agitation or jarring is not in itself a complicated expedient, yet it is one capable of producing large results in the art as a whole. And while I am not in a position to state the improvement which it has produced in terms of dollars and cents, my experience assures me that it

must necessarily have produced results of an important and extended character." Are you able to give any more definite opinion as to the value of this Arrott dredger? 1

A. Not from facts strictly within my knowledge. There are a great many facts of which I am cognizant, which were brought out in the suit on the patent, indicating a more specific and definite result in the business, produced by the Arrott dredger.

Q. Would you say the value of the patent mounted into the hundreds of thousands of dollars?

A. I would not undertake to estimate the value of the patent without more data than I now have.

Q. You state: "it is still possible to enamel bath tubs by the old hand process, although it would not conform to the more modern methods resulting from the mechanical in distinction from the manual dredger." I understand the meaning there to be that the Arrott dredger, while not a necessity, is an economical convenience in manufacture? 2

A. That depends somewhat upon the conditions. A machine may be—

Q. You are not referring to the Arrott dredger now.

A. Yes, I will make that clear. A machine like the Arrot dredger may be of such practical convenience that it becomes a necessity in an industry except as a theoretical matter. 3

Q. Well, now, is this Arrott dredger of such practical convenience that it is a necessity?

A. I think it is, from what I know of the situation.

Q. You have not, as you testified, been over the plants of any other manufacturers? A. No.

Q. You have not observed the methods of manufacture of any other manufacturer other than the Standard and the Mott, so far as it was involved in that other suit?

A. That is correct. 4

Q. You do not know whether other manufacturers, as a matter of fact, do or do not use mechanical dredgers?

A. I do not.

Q. Are you often a witness in patent suits, Mr. Bentley?

A. Yes.

Q. That is, being an expert witness in patent suits is one of the important parts of your business? A. Yes.

Q. And you expect to be paid for coming as an expert witness in this case? A. Yes.

1 Q. Which of the defendants have retained you as a witness in this suit?

A. The Standard Sanitary Manufacturing Company.

Mr. CHRISTY: Do you mean in this suit, Mr. Grosvenor, or in any other suit?

Mr. GROSVENOR: I mean in this suit.

THE WITNESS: Yes.

Q. When you said that this Arrott dredger is more accurately defined as a machine than as a tool, what did you mean by that?

2 A. There are only four classes of inventions which are patentable, to wit, an art or process, a machine, an article of manufacture and a composition of matter. The Arrott device would fall under the class of the "machine," there being no technical class of patentable articles known as "tools." A machine like the Arrot dredger might be popularly called a "tool," although in general that term relates to smaller and simpler articles, like hammers, chisels, etc.

Q. The dredger, then, is a tool in the sense that it is an instrument or device used in manufacturing something else? A. That could be said.

3 Q. Now, in this testimony yesterday, on page 356, you said among other things: "He is therefore compelled to use an asbestos mitten," etc.; you are referring there to the short handle dredge given in that picture known as Defendants' Exhibit No. 6? A. Yes.

Mr. GROSVENOR: That is all.

RE-DIRECT EXAMINATION BY Mr. CHRISTY:

Q. I don't know Mr. Grosvenor's purpose in asking you by whom you were retained to testify in this case, but you did not intend to state further than your understanding,

4 did you?

A. No, as I remember it, the retainer was paid me by Mr. Christy, and I assumed that it was in effect from the Standard Sanitary Manufacturing Company, by whom I had been retained before.

Q. I believe you said or implied in your cross examination that at the time you made preparations for testifying in the former suit, you knew of this long handle dredge; how did you obtain that information?

A. It was referred to in the testimony of one of the wit- 1
nesses in that case, although I may have learned of it in conversation with others. I remember that I directed to have photographs made of the long handle dredge, corresponding to the photographs which I have here produced of the short handle dredge, and such photographs I saw at the time of the suit on the patent.

Q. I hand you two photographs and ask you whether these are photographs, or prints of them, among others which you had made at that time and to which you have just referred?

A. Yes, these are the photographs I referred to. 2

Mr. CHRISTY: Defendants' counsel offers in evidence the two photographs last identified as "Defendants' Exhibit No. 8" and "Defendants' Exhibit No. 9."

Photographs referred to were then marked and filed as Defendants' Exhibits Nos. 8 and 9, respectively.

Mr. GROSVENOR: I make the same objection to these photographs as I made heretofore.

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Bentley, you are not a chemist, are you? A. No.
Q. You are a mechanical and electrical expert? A. Yes. 3

Examination concluded, and signing of deposition waived by agreement of counsel for the respective parties.

JOHN C. REED, a witness of competent age, produced on behalf of the defendants, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. CHRISTY:

Q. Please state your name, age, residence and occupation? 4

A. John C. Reed; I was sixty-four years of age on the 19th day of last February. I reside at 3706 Brighton Road, North Side, Pittsburgh. I am manager of the Standard works of the Standard Sanitary Manufacturing Company.

Q. How long have you been connected with the Standard Sanitary Manufacturing Co. and its predecessor, the Standard Manufacturing Company, and in what capacity?

A. I entered the employ of the Standard on the first day of January, 1893, and have been in the employ of the Stand-

1 ard Manufacturing Co., and the Standard Sanitary Manufacturing Company since the organization of that company, until the present time.

Q. What was your position when you first went with the Standard Manufacturing Company?

A. General superintendent of the works.

Q. Have you always been connected with that plant?

A. With the exception of about seventeen or eighteen months—no, about fifteen or sixteen months—between February, 1900, and June, 1901, when I was not directly attached to any of the plants of the company during that time. After
2 that time, or during June, 1901, I was appointed manager of the Standard works.

Q. During the time that you have been at the Standard works, you have, of course, become familiar with the methods of manufacture and machines used there, have you?

A. Yes.

Q. To save time, I will ask you when the Arrott dredger was adopted at that plant?

Mr. GROSVENOR: The Allegheny plant?

Mr. CHRISTY: Yes.

3 A. According to my best recollection, the experimenting connected with its development began either late in 1897 or during the fore part of '98, and its use was begun during '98.

Q. And about what time was the plant completely equipped?

A. Well, I could not state positively. I was not directly in charge. I was not the superintendent of the enameling department at that time; I know there was considerable objection on the part of the men to the use of it, growing out of the fear that it would reduce their wages or make them
4 increase the output, but I think it was some three or four months after it had been developed and made successful before it was permanently adopted.

Q. Who was in charge of the enameling room at that time?

A. Mr. James W. Arrott, Jr., was superintendent of the enameling department.

Q. Subordinate to you, was he?

A. Yes, generally speaking; under my title he was, yes.

Q. Did you personally observe the advantages, if any, of

the use of the Arrott dredger as compared with the hand methods of enameling formerly used there? A. I did. 1

Q. Will you name some of these advantages which you observed there?

A. Before the introduction of the Arrott dredger, the enameling of an article was a very different operation, speaking from the manual labor and the physical effort necessary standpoint, and from the exposure to the high temperature and the inability to save oneself from it in the operation in using the old style knocker and dredge.

Q. And did the adoption of the Arrott dredger materially help these conditions? 2

A. I consider that it did, very greatly.

Q. As respects the labor?

A. As respects the amount of labor necessary to perform the operation and the direct exposure to the temperature, it was a very great mitigation.

Q. How did it help as regards exposure to the temperature?

A. When the man used the old style dredge, it was necessary for him to use both hands, and he had a fork-shaped rapper or knocker, and he had to stand in closer to his work, and he could not dodge the temperature as a change 3 of position would aid him to do when he had command of the article with both of his hands, and he was enabled to stand slightly farther away; with that degree of temperature "slightly" means a great deal.

Q. As regards the quality of work done by the men, did the adoption of the Arrott dredger improve it?

A. Yes, sir, I consider it improved it very greatly, and it was the greatest advance in the art of depositing enamel on the ware that had been made up to that time in my experience.

Q. In what way did it improve the quality of the ware? 4

A. By giving the operator greater command of the process with greater ease.

Q. That is, enabled him to do the work more accurately, is that it?

A. More accurately and better, under better conditions.

Q. Was he enabled to enamel more tubs in a given time?

A. Yes, sir.

Q. And that increased your furnace output, did it?

A. That increased the furnace output.

1 Q. Prior to the adoption of the Arrott dredger, about how many tubs did the men enamel in a given time, that is, one furnace crew?

A. I would not consider myself a good authority, and can only state in general terms my recollection, as the direct supervision of the work was under Mr. J. W. Arrott, Jr. My recollection is that the output was approximately about twelve tubs per turn—ten to twelve tubs, I would say; that was prior to the introduction of the Arrott sifter or dredger.

Q. That was per turn of how many hours?

A. I am unable to state precisely the length of the turn,
2 for the reason that some time prior to the introduction of this improved dredger there were only two turns, and I don't know the exact length of them; but either prior to, or about the time, the eight hour turn was adopted, making three turns in the twenty-four hours, following each other continuously.

Q. As you do not recall those matters, I will not go any further with them. Did the adoption of the Arrott dredger make it easier for you to hire and break in the men?

A. My own observation of the thing was that it made the enameling of an article very much easier, and that men were
3 more easily broken into the work.

Q. Was this advantage so marked as to have been of importance, in your judgment? A. It certainly was.

Q. You say in substance—if I correctly remember your testimony—that as regards the application of the enamel to the ware, this was the most important advance which had been made down to that time. Do you know of any other appliance for applying enamel at the present time which you could use with equally satisfactory results?

A. I know of no other device that could be made to take its place satisfactorily.

4 Q. What is your present output of tubs?

THE WITNESS: By the turn?

MR. CHRISTY: By the day of twenty-four hours?

A. That would be three turns; a day consists of three turns of eight hours each, and our average output of the average tub is from forty-eight to fifty-one for the twenty-four hours to the furnace, which runs approximately from fifteen to seventeen per turn. Greater outputs than that have been made, but I am giving you the approximate average.

Q. And how many bath tub furnaces have you in operation at the Standard plant? 1

A. At the Standard works we have nine regular bath tub furnaces, but we have other furnaces adapted to making bath tubs in, and have run as high as twelve or thirteen.

Q. Would it be possible for you to produce bath tubs at your present rate by the use of the hand dredge or any other appliance known to you except the Arrott dredger for applying the enamel to the tub?

A. In the first place, I believe that if we went back to the old style dredge our enamelers would first quit in a body, and if they did not, I would expect the output to fall off from 40 to 50 per cent. 2

Q. Then, what have you to say as to the importance to your business of the use of this Arrott dredger for applying the enamel?

A. If we had to abandon the Arrott dredger, it would be an immense step backwards, both in regard to output and the quality of the product.

Q. How about inspection nowadays; how does it compare with the inspection of tubs and other enameled ware prior to the introduction of the Arrot dredger?

A. I would have to say that in my best judgment and belief in the matter, that the rejected tubs today, on the question of quality, are infinitely superior to the best tubs that were made in those days; not that it was absolutely impossible to make a bath tub, and not that they did not do it, but that this was the average way. 3

Q. How about the rejections at the present time, how would they compare with the quality of tubs which went on the market prior to the adoption of the Arrott dredger?

A. I have practically answered that question in my reply to the last, that the rejected tubs today are superior from the standpoint of quality of enameled products, in those points which are considered important today, than the best of the average grade of that day. 4

Q. How far, if at all, is this improvement in the quality due to the Arrott dredger?

A. Very largely; in fact, it would be the greatest item in the ability to produce good ware.

Q. And why is this?

A. Because of the better command of the distribution of

1 the enamel under more advantageous circumstances, with the use of this dredger.

Q. How about the weight of the tubs of the same quality as produced before the adoption of the dredger?

A. The weight of the tubs today is much lighter than it was at that time.

Q. Does the Arrott dredger contribute at all to this?

A. It has, in a very large measure, by enabling the operator to distribute the enamel quicker, covering the surface more rapidly and thereby conserving the heat in the article which it is necessary to conserve in the process of covering
2 the article with enamel.

Mr. CHRISTY: I think that is all, Mr. Grosvenor.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. There are other important things in the manufacture of good ware than the use of the Arrott dredger, aren't there?

A. Well, good enamel, to begin with, is very essential.

Q. That is absolutely essential, is it not?

A. Yes, it might be said to be absolutely essential.

Q. How about the slush?

A. The slush is a very necessary part of the process; yes,
3 sir.

Q. And it has taken years of study to arrive at the proper formula for making the slush and also the proper formula for making the enameling powder, is not that right?

A. Yes, but successful powder was made and successful slush was made before the days of the Arrott dredger.

Mr. GROSVENOR: I am not referring to the Arrott dredger; just answer my question.

THE WITNESS: Oh, I beg your pardon.

Mr. GROSVENOR: Will you read the question, please.

The last question was then read by the stenogra-
4 pher.

THE WITNESS: I will have to admit that I hardly know how to reply to that correctly. According to the best of my knowledge, the enameling slush or first coat and the enamel itself has to exist to a satisfactory extent to admit of enameling at all successfully, always.

Q. When was enameled ware first made? I do not mean

spoons and kitchen ware, but I am referring, of course, to sanitary enameled iron ware. 1

A. Well, before my knowledge of the business.

Q. When did your knowledge begin?

A. My knowledge of the business began with my employment by this company.

Q. In '93?

A. Yes, sir; I was totally ignorant of the business when I went with them.

Q. There have been many improvements in the art since then?

A. Yes, sir, there have been many improvements. 2

Q. The powder has been changed?

A. From the time I entered the employ of this company down until 1901 I was not in custody of the enameling secrets of the company down to that time, so I could say nothing about it. I will have to say to you now that the enamel which was given to me at that time was the best enamel known to the business today.

Q. In 1901? A. Yes, sir.

Q. You have not changed your enamel, then, since 1901?

A. Yes, sir, we have, but I considered that the best enamel made. 3

Q. Have you changed your enamel since then?

A. More or less.

Q. How about the slush coat?

A. The slush coat has been changed frequently and is the subject of frequent change, but the slush coat given me at that time I consider as good as any ever invented since.

Q. Do you consider that slush coat of 1901 as good as that used by you today?

A. First the enamel was mixed for me, then it was mixed by me and then by my son for a term of years, then by another man, who is now in charge of it, and for the last two 4 years back we have had a general superintendent of enameling, who has more direct charge of the enameling part of the business or what the enameler shall consist of than I have personally, and I could not answer your question categorically, right up to the minute on that.

Q. He has charge, then, of the powder making and the slush making?

A. Yes, those two things are parts of each other.

1 Q. You cannot say, then, whether those two things have or have not been changed in the last two years?

A. I can say they have been changed in part to try to make them better, but to say what those changes consist of, I could not state.

Q. The formula for making the slush is a secret, is it not?

A. Well, everything connected with the making of the enamel is a secret.

Q. How about the making of the casting, that is the analysis of the pig iron which goes into the casting; is that a secret?

2 A. Oh, I don't think so. I would not say it was a secret. There are few businesses conducted by people who consider themselves up to date, where they tell all about it to everyone. We go into the market and buy all kinds of pig metal that are known in the different grades, and then we make different mixtures to get the mixture that will work best.
make different mixtures to get the mixture that will work best.

Q. Now, this mixture of the different kinds of pig iron, have you a formula for that?

A. I have my own formula; every other foreman has his.

3 Q. Is that one of the secrets?

A. Well, I would not consider it a secret.

Q. In other words, it is not as important as the powder and the slush?

A. No, not by any means. I will tell you what my metal mixture is.

MR. GROSVENOR: No, we don't want you to.

THE WITNESS: There is a whole lot of sand being thrown in people's eyes, you know. On the subject of pig metal in bath tubs, or iron in our business, what we have got to have is good pig metal, free from pro
4 nounced characteristics that are deleterious to the process.

Q. What sort of a hand dredge were you using before you adopted the Arrott dredger in the Allegheny factory, a short handle dredge?

A. Well, that might be comparative.

Q. I show you Petitioner's Exhibit No. 279 and ask you if it was this form of hand dredge?

A. That form, but very much smaller.

Q. Very much smaller? A. Yes.

Q. Was it supported from the ceiling?

A. Not at that time.

Q. That is, you did not adopt a counterweight until you put in the Arrott dredger, is that right?

A. I think that would be a correct statement.

Q. But at the New Brighton factory of the Standard they had adopted the long handle dredges supported by a counterweight before the Arrott dredger was introduced?

A. I was never in the New Brighton factory until four or five years after the Arrott dredger was produced and used.

Q. If this long handle dredge had been used, supported by a counterweight, it would enable the workman to stand further away from the tub, would it not?

A. Not and do good work.

Q. Your testimony conflicts with that of the foreman of the enameling department of New Brighton. A. I can't help it.

Q. Did you ever try this long handle dredge at Allegheny?

THE WITNESS: Never, to my knowledge—that is, you mean now in actual practice and work?

Mr. GROSVENOR: Yes.

THE WITNESS: Or to make a test with it?

Mr. GROSVENOR: Either.

A. I saw a test of it made.

Q. When, a few weeks ago? A. Yes, sir.

Q. On one tub? A. I think on one tub, yes, sir.

Q. Otherwise you never saw any application of it?

A. I never saw it.

Q. The short handle dredge is the one you tried at Allegheny?

A. Well, a dredge with a handle long enough to do satisfactory work. Some handles were a little shorter and some a little longer, depending on the man who used it.

Q. I now show you Petitioner's Exhibit No. 278 and ask you if this is the type of hand dredge you used to use at Allegheny? A. That is about the type.

Q. And that is the only kind you used?

A. Prior to the introduction of the Arrott dredger that was the typical large sized dredge for us.

Q. The large sized? A. Yes, we had smaller ones.

Q. Smaller ones for the rims?

1 A. Well, for various purposes.

Q. Did you ever go over the works of the United States Sanitary Manufacturing Company?

THE WITNESS: Do you mean at Monaca?

Mr. GROSVENOR: Yes, I guess so.

A. I visited that works once.

Q. How long ago?

A. Possibly a year and a half or two years.

Q. 1909?

A. I connect my visit there with a law suit that the
2 Standard Sanitary Manufacturing Company had with the people who supplied the coke and the cupola man—

Q. Don't go into all of that now, but does that help you to specify whether it was two years ago?

A. Approximately two years ago, yes.

Q. They were using the Arrott dredger then, weren't they?

A. I don't know; I did not make any examination. I was merely taken through by courtesy, not with the purpose of inspecting the plant at all.

Q. They have had shop rights to use the Arrott dredger
3 since the organization, haven't they?

A. I understand they have. I believe they have. But, I could not answer that, though. There was a law-suit connected with that, and I don't know how that was fixed up, except by hearsay.

Q. Which are your best tubs today, your heavy tubs or your light tubs? A. A light tub well laid—

Mr. GROSVENOR: Just answer the question without going into a description. We will get the description later. Read the question, please.

Stenographer then read the last question.

4 A. Well, all tubs are the same, in whatever grade they are made in.

Q. Take the "Nemo," is that your cheap tub?

A. The "Nemo" tub is a cheap tub.

Q. Is that a light tub? A. Yes, sir.

Q. How about your "Luxor," is that your high-grade tub?

A. I never made the "Luxor."

Q. Where is that made, at New Brighton?

A. New Brighton.

Q. Is the "Luxor" a heavy or a light tub? 1

A. I am unable to answer that, except in a general way.

Q. Answer it in a general way.

A. The effort of the company is to make the lightest possible tub that will make a good tub, for reasons other than enameling.

Q. Is your "Luxor" a better tub than your "Nemo?"

THE WITNESS: In what way do you mean?

MR. GROSVENOR: Is it a higher priced tub?

A. I never made the "Luxor" tub myself, but it is a higher priced tub. 2

Q. It costs more? A. Yes, sir.

Q. State the high grade tubs that you manufacture?

A. We manufacture the "Essex."

Q. Is that the best tub you manufacture? A. No, sir.

Q. Well, what is the best tub you manufacture?

A. That is the "Albion" tub.

Q. Is the Albion tub a heavier tub than the "Nemo?"

A. It is a much larger tub.

Q. Is it a heavier tub?

THE WITNESS: I will have to understand what you mean by that before answering. Do you mean is it thicker? It must be heavier if it is larger. 3

MR. GROSVENOR: Yes, is it thicker?

A. We aim to make it approximately the same thickness.

Q. What is the size of the "Nemo?"

A. The size of bath tubs—

Q. I am asking you the size of the "Nemo."

A. There are various sizes of it.

Q. Well, give them, then.

A. Four and a half, five, five and a half feet long, that is.

Q. Are your patterns all the same thickness? 4

A. They are, as nearly as we can make them.

Q. That is, no matter what the grade or the kind of tub?

A. The question—

MR. GROSVENOR: Just answer that, will you, please?

THE WITNESS: I don't know whether I can answer it. What is the question, please?

The stenographer then read the last two questions and answers.

A. I would have to make the same answer, and I might ask to be allowed to explain.

Q. What is the same answer?

A. Well, we tried to make them all one thickness, approximately. There are parts on the tub, though, that for manufacturing reasons we consider it necessary to vary the thickness.

Q. What parts of the tub are those?

A. Well, the rim is heavier than the body.

Q. That is true of all tubs, is it not?

A. More or less, but the larger the rim, the greater the variation of thickness.

Q. Have you been making any experiments at the Allegheny plant with a view to substituting an electric dredger for the Arrott dredger within the last year?

A. Not within the last year, no.

Q. Within the last several years?

A. An experiment was conducted there possibly some two or three years ago or inside of that time; possibly more than two years and less than three, to try an electrical dredger out.

Q. You testified that your rejected tubs today were infinitely better than the best that were made ten years ago, is that right?

A. No, prior to the introduction of the new dredger.

Q. Well, during these ten years you have made other changes than in the dredger, haven't you?

A. I meant to reply to that that the same enameling apparatus which was in use ten years ago is the same as is used now, speaking broadly.

Q. Can merchantable, salable enameled ware be manufactured by the hand dredge?

A. It was manufactured by the hand dredge prior to the introduction of the new dredger.

Q. Can it be today?

A. I would say not at the same price or of the same general average quality.

Q. In other words, in using the hand dredge, there are more apt to be imperfect tubs than in using the Arrott dredger? A. Yes, sir.

Q. But you do get good tubs with the hand dredge, don't you?

A. I consider it possible to make what would be classed as a fair tub by the hand dredge. 1

Q. The Arrott dredger is, though, an economical advantage in the manufacture?

A. Yes, it is undoubtedly, in my opinion.

RE-DIRECT EXAMINATION BY Mr. CHRISTY:

Q. As to this matter of the possibility of making, as you express it, "a fair tub" with the hand dredge at the present day, do you think that a workman could produce, regularly, tubs, which you would call fair quality, by hand?

A. No, I would not consider that the hand dredge could compete with the improved dredger, and I would not like to be in a position to have to make the change. 2

Q. Could you make the change, in your opinion, and, even at greater expense, get the same quantity of good tubs that you do today?

A. I reckon we would have to bring into existence 50 per cent more enameling capacity in furnaces and the necessary conditions to produce the ware.

Q. Could you maintain a regular production of as good ware as you do today? A. I don't believe we could.

3

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Did you take any part on behalf of your company in the entering into of the license arrangement with Mr. Wayman as to the use of the Arrott patent?

A. No, sir, none whatever.

Q. Did you know anything about it until the arrangement was concluded?

A. I did not know anything about it except by hearsay and talk that some kind of an arrangement was contemplated.

Q. You consider this Arrott dredger of great value? 4

A. I do as an adjunct to the enameling business.

Q. Would you be able to place any value, in dollars and cents, upon it?

THE WITNESS: In what way do you mean, now?

Mr. GROSVENOR (reading the question).

Stenographer then read the last question.

THE WITNESS: I don't think I quite understand the question.

1 Q. Is the sole right to use the Arrott dredger worth one hundred thousand dollars?

Mr. CHRISTY: Objected to as speculative.

A. That would depend largely on how much use you had for it.

Q. Well, take it in your plant; is it worth to you in Allegheny one hundred thousand dollars a year?

THE WITNESS: A year?

Mr. GROSVENOR: Yes?

THE WITNESS: That is a large sum.

2 Mr. GROSVENOR: Will you answer the question? Just read it to him, please.

The stenographer then read the last question.

A. I am afraid I would have to buy it as against any other method that I know.

Q. Even if it cost you $100,000 a year?

A. I don't know how I could get along without it and keep up with the crowd. That would be up to those who were my superior officers, whether to buy it or not. I might not have a voice in it.

3 Q. Are you a stockholder or director in the company?

A. I am a stockholder.

Q. Are you a director? A. I am a director.

Q. Was the subject of entering into a license agreement with Wayman discussed at any of the meetings of the directors?

A. No, sir. A statement was made that a contemplated trade arrangement was going to be entered into, but there was no discussion of it. It was a matter within the hands of the executive committee.

Q. And they were authorized by the Board of Directors

4 to enter into such an arrangement?

A. No, sir; there was no authorization asked for and no action taken.

Q. The executive committee simply reported that they had done it?

A. No, sir, they never reported that they had done it. It was prior to the time the matter was being discussed and talked about.

Q. When was it discussed at the Board of Directors?

A. It was not discussed there at all. The statement was

made that the executive committee was considering the ad- 1
visability of entering into a trade arrangement.

Q. Who made that statement?

A. The statement was made by the president of the company.

Q. Entering into a trade arrangement with whom?

A. Well, with the trade generally, I understood.

Q. With the other manufacturers?

A. Well, I don't know how comprehensive it might have been understood to be. It was stated to be a trade arrangement and that was about all that was stated.

Q. Did this statement go down on the minutes of the 2
meeting? A. I don't know; I don't think so.

Q. Who has charge of the minutes? A. The secretary.

Q. At any meeting of the board of directors at which you were present, was the subject of making a loan of stock to anyone, in connection with this trade agreement, discussed?

A. No, sir.

Q. Or the loaning of cash money to Wayman or anybody else?

A. Never; it never was mentioned at any meeting of the board of directors. I have attended all meetings.

Q. When was this statement made? 3

A. I think it was in the April meeting of last year.

Q. April, 1910?

A. Yes, I think it was. It was when I heard the matter discussed that there was going to be some kind of a trade agreement made.

Q. Then you asked about it? Someone asked about it?

A. No one asked about it. The president made the statement that the executive committe was considering the advisability of entering into a trade agreement.

Q. Who was on the executive committee?

A. The Executive Committee consists of the president, 4
the first vice-president—

Q. Who is he?

A. The first vice-president, Mr. Torrance, and the secretary and treasurer, Mr. W. A. Myler, and the general manager, E. L. Dawes.

RE-REDIRECT EXAMINATION BY Mr. CHRISTY:

Q. In referring to this mention of a contemplated action of the executive committee, did you intend to state accu-

rately the language used, or only the impression which you received? A. Only the impression.

Q. But you did not mean to assert that Mr. Ahrens used the particular words in which you have expressed it, did you?

A. No, I understood that some arrangement or agreement of some sort was contemplated and which had not been executed.

Q. But you did not understand and did not pretend to understand what that arrangement was? A. I did not.

RE-RECROSS EXAMINATION BY Mr. GROSVENOR:

Q. Will you state just exactly what was said?

Mr. CHRISTY: Defendants' counsel has not heretofore objected to questions of this kind. Now that a more detailed question is asked, he does object to it both as improper cross examination, in that counsel is making the witness his own, and secondly for the reason that evidence as to a mere verbal statement like this can hardly be called satisfactory proof.

Mr. GROSVENOR: Read him the question, please.

Stenographer then read the last question.

A. I can only state in substance my understanding of what was said.

Q. Will you state that to the best of your recollection?

A. To the best of my recollection the statement was made—

Q. By Mr. Ahrens?

A. By Mr. Ahrens, that some kind of agreement—trade agreement—was in contemplation by the Executive Committee.

Q. Did he state with whom?

A. He did not state with whom, to the best of my recollection.

Examination concluded, and signing of deposition waived by agreement of counsel for the respective parties.

JOSEPH VARLEY, a witness of competent age, produced on behalf of the defendants, having first been duly cautioned and sworn, testified as follows: 1

DIRECT EXAMINATION BY Mr. CHRISTY:

Q. State your full name, age, residence, and occupation?

A. Joseph Varley; 46 years old; residence Mansfield, Ohio; occupation, enameling foreman.

Q. For what company, sir?

A. The Humphryes Manufacturing Company.

Q. How long have you been employed by the Humphryes Manufacturing Company? 2

A. Since the 4th day of last September.

Q. Where were you employed previous to that?

A. Previous to that I was with the Colwell Lead Company, in Elizabeth, New Jersey.

Q. How long were you there? A. Fourteen months.

Q. And before that?

A. Previous to that I was with the Humphryes Manufacturing Company for two years and a half. Previous to that I was with the Dawes & Myler Company for two years and a half, and previous to that I was off on account of my health from the business, but previous to the time that I was off on account of my health, I was with the Dawes & Myler Company for about nine years, as enameler. 3

Q. You started in the business with the Dawes & Myler people? A. Yes, sir.

Q. First as helper and then as enameler?

A. First as slusher.

Q. And you worked your way up?

A. Yes, sir; I worked my way up.

Q. When was it you were first an enameler?

A. If you can tell me when the Dawes & Myler plant started—I think it was '85. 4

Q. You went with them then? A. Yes, sir.

Q. And when did you become an enameler?

A. Why, I went to enameling about four weeks after being with them.

Q. And you have been in the enameling business, either

1 as enameler or foreman of the enameling department, ever since? A. Off and on for about twenty-two years.

Examination Suspended.

The hearing was then adjourned until the following morning, March 30, at 10 o'clock, at the same place.

IN THE CIRCUIT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF MARYLAND.

2 THE UNITED STATES OF AMERICA

vs.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Pittsburg, Pa., Federal Building,
March 30, 1911.

3 Pursuant to adjournment, the taking of testimony on behalf of the Defendants was resumed this thirtieth day of March, 1911, at 10 o'clock A. M., at the same place.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General.
MARSHALL A. CHRISTY, Esq.,
on behalf of the Defendants.

JOSEPH VARLEY, a witness heretofore produced and sworn on behalf of the Defendants, resumed the stand for
4 continuation of direct examination and testified as follows:

DIRECT EXAMINATION BY Mr. CHRISTY (continued):

Q. When did you first see the pneumatic dredger used for sifting enamel on tubs?

THE WITNESS: Do you want the date of that?

Mr. CHRISTY: As near as you can recall. If you do not remember the exact date, state where you first saw it?

A. I saw it at the Dawes & Myler plant at New Brighton. 1

Q. That was at the time you were at the Dawes & Myler plant before you went with the Colwell Lead Company?

A. That was the time I was at the Dawes & Myler plant, yes, before I went with the Humphryes Manufacturing Company the first time.

Q. Was it being used through the whole factory then?

A. Yes, sir.

Q. What was your position?

A. I had charge of the sandblasting and cleaning of the ware.

Q. Then you were not enameling then? 2

A. Not at that time.

Q. Did you ever use it yourself?

A. Yes, sir; not at the Dawes & Myler plant, but I had used it at the Colwell Lead and also at the Humphryes.

Q. How did the pneumatic dredger compare with the hand dredger as respects the men themselves, the labor in applying the enamel?

THE WITNESS: The men physically?

Mr. CHRISTY: Yes.

A. Well, I had about nine years' experience with the hand 3
dredge, making anything from a small lavatory to a pool bath; I find that the hand sifter is very crude compared to the pneumatic sieve in this way. Have you a hand sifter here? I could demonstrate much better than I could explain it to you.

(A hand dredge was then produced.)

THE WITNESS: The old hand sifter keeps you in a cramped position all the time, that is, of the wrist, of the left shoulder, and also the wrist of the right hand. It is a constant tap, and the cramped position your wrist is in—you see the wrist is thrown out of its natural position— 4

Q. (Interrupting): You mean the wrist of the left hand?

A. Yes, sir; when you have fifteen to twenty pounds of enamel in that sieve, and you have that resting on your elbow and the only support you have is your elbow, and that thing slides off, you have no idea what a strain there is on the wrist. I have seen and I know cases where the wrist has been paralyzed.

1 By Mr. Christy:

Q. The left wrist?

A. The left wrist has been paralyzed by the use of the sieve. You do not have the free use—

By Mr. Grosvenor:

Q. You are talking of the old short-handle dredger?

A. Yes, sir; and beater.

By Mr. Christy:

Q. How was it with the long-handle dredge?

2 A. The long-handle was a little easier than the short-handle, simply because we had a counter-balance on the end. I think I was the originator of the long-handle swinging dredge at the Dawes & Myler plant.

Q. How about the guiding of the long-handle dredge over the ware; is that difficult or easy?

A. It was a little more difficult than the short-handle sieve.

Q. Why?

A. Why, on account of being so far away from your work. It permitted you to get farther away from the heat. With the

3 short-handle dredge I remember when they made us tin aprons, and they would fill those with water and we worked with them on.

Q. You did not need that with the long-handle dredge?

A. No, sir; because we were not so near.

Q. You were not as near the work and that was a disadvantage, wasn't it?

A. Yes, sir; you take this hot metal and stand within eighteen inches of it part of the time and your stomach gets hot. Mr. Dawes and Mr. Myler got up the tin apron which could be filled with water to overcome that intense heat on

4 a man's stomach. Now, as to the pneumatic dredger: You take the pneumatic sieve, while this is not constructed just the same as ours—

Q. This (indicating) is Petitioner's Exhibit No. 280 to which you refer?

A. Yes; our handle is a little larger. We have done away with this kind of a trigger on ours and just have a button and the sliding lock, you might say; now, a man taking this sieve has the free use of his hand; you do not have to hold that

sieve in this way (indicating). This is the way you hold that 1
sieve and after you turn your lock on your button, you can take hold of it here and you have free use of it.

Q. And that was easier on the workmen?

A. Yes, sir; and the more easy distribution of the enamel.

Q. It improves the ware?

A. Yes, sir; it gives you a smoother piece of work. It does not get wavy.

Q. How about the number of pieces produced? Could they produce more?

A. When I was making bathtubs—and I have made every- 2
thing along that line from a glue cup to a pool bath—when we started to make tubs in the Dawes & Myler plant, which I think must have been 1886 or '87—I cannot just remember, we would make at that time five and six tubs a day. Of course, we would slush what we made at that time, that is put on the first coat. At the present time, showing you the increase in production from that time to the present time, we were working in those days ten and twelve hours, ten hours in the day and twelve hours in the night, and the present time I have men who are making bathtubs every day and are turning out from sixteen to twenty tubs in eight hours.

Q. That is with the pneumatic dredger? 3

A. That is with the pneumatic sieve; you could not do that with the old hand sieve; a man could not stand it.

Q. You could not possibly make that production, you say, with the hand sieve?

A. You could not possibly make that production with the hand sieve. Then, there is another thing with the old hand sieve: With the hand sieve you have to stand facing the work all the time; there is no such thing as turning sideways to the heat; you must stand directly in front of the work, but with the pneumatic we can stand with our side to the work, which is a great advantage. We make just as good work that 4
way.

Q. How about the inspection nowadays, is that more severe than it was in '98?

A. The inspection of the ware at the present time is the most rigid thing we have to contend with.

Q. How does the quality accepted compare with the quality accepted in '98?

A. The quality accepted at the present time must be A No. 1. A piece of ware—take what we call our non-guaran-

1 tees, which is an inferior class of goods, they would have been counted in those days A No. 1.

Q. Would the average quality in '98, that is I mean the average quality as respects the application of the enamel, be acceptable today? A. Not as first-class stuff.

Q. You mean it might be acceptable as seconds?

A. Oh, yes, it would be accepted as a second-grade tub, but there is an exception right there. A man could today, maybe with one tub he might make an A tub with the old hand sieve, but to keep it up, one tub after the other, he could not do it, but we do it with the pneumatic sieve.

2 Q. Right along? A. Yes, sir.

Q. But with the hand sieve you only got them occasionally? A. Yes, sir.

Q. Have you reduced the weight of the tubs now from what they were in '98?

A. Oh, yes, we reduced the weight of our tubs.

By Mr. GROSVENOR:

Q. Whom do you mean by "our"; you have worked with several companies?

A. The Humphryes Manufacturing Company. We are 3 making our tubs at the present time from twenty to thirty pounds lighter than they were when I was there before.

By Mr. CHRISTY:

Q. Before they were using the hand sieve, is that right?

A. Well, before they were using the electric.

Q. What is the cause of whatever reduction in weight of tubs there has been?

THE WITNESS: What is the cause?

Mr. CHRISTY: Yes.

THE WITNESS: In what way?

4 Mr. CHRISTY: I mean, how were you able to reduce the weight of the tub?

A. We were able to reduce the weight of the tubs by reducing our patterns.

Q. Could you with the hand dredge—

Mr. GROSVENOR: I object to that as leading.

Q. Could you with the hand dredge satisfactorily enamel tubs as light as you now make them?

A. The hand dredge and the enameling of tubs, the time you would take a tub from the furnace and throw it on the table and get your sieve and then with our asbestos gloves— 1

Mr. GROSVENOR: What is he talking of, the long-handle dredge?

A. (Continuing): No, sir; the short-handle dredge. We used the asbestos gloves on each hand; at the present time we use one asbestos and one common cloth. By the time we are ready to put the enamel on that tub, the tub would be chilled, that is if we took the weight of the tubs at the present time, and by the time we got through sieving, the enamel would not have adhered to the slush or first coat good enough to hold it, and the least little bump would knock the powder down to the bottom of the tub. 2

Q. Do the workmen using the pneumatic sieve lose as many tubs as formerly with the hand dredges at the Dawes & Myler works? A. No.

Q. Can you give us any idea what the difference is?

A. I know from my own personal experience in making tubs in those days and being foreman over the men making the tubs at the present time, that the losses are smaller.

Q. That is the losses right in the enameling room? 3

A. Yes, sir.

Q. How about training the men? Does the pneumatic dredger make that easier?

A. Yes, sir; why, I took one case when I was with the Colwell Lead Company—I took a young man who was making $1.50 a day, which I could not have done under the old hand system of dredging, and in less than three months time, he was making $4. I got him to making smaller ware. One of the hardest things that we have to make is lavatories—

Q. At the Colwell Lead they used the long-handle dredge?

A. When I got there they were using that sieve standing over there (indicating). 4

Q. With the harness arrangement?

A. Yes, sir; and when I took charge of the plant I put in the pneumatic sieve.

Q. Was the electric dredger a success at the Humphryes plant?

A. No; the enameling men objected to it very strongly.

Q. What was the matter with the men, why did they object?

1 A. Well, in the first place, it is much heavier than the pneumatic dredger and during a thunder storm they would frequently get shocks, and another thing about the electric is that we could not get the proper vibration.

Mr. CHRISTY: I think that is all, Mr. Grosvenor.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Varley, did you take any part on behalf of the Humphryes Manufacturing Company in the negotiations which resulted in the taking out of the license to use the Arrott patent from Wayman? A. No, sir.

2 Q. Or any of the meetings during 1910, with that object in view? A. No, sir.

Q. Or, did you attend any such meetings or take part in any such negotiations on behalf of the Colwell Lead Company while you were there? A. No, sir.

Q. Did you take part on behalf of any of the other defendants? A. No, sir.

Q. Did you know anything about the license arrangement until it was completed?

A. I did not know anything about it until it was in operation. I got my first idea from the New York American, I

3 think.

Q. Were you then with the Colwell?

A. I was with the Colwell Lead at that time.

Q. Did you know anything about the making of the powder? A. I certainly do.

Q. Is that an important branch of the business?

THE WITNESS: Is it what?

Mr. GROSVENOR: Read that, please.

The stenographer then read the last question.

A. Yes, sir; that is the secret part of our work.

4 Q. You say that is "the secret part"?

A. Yes, sir; the secret part of our work.

Q. Is the slush also a secret part of your work?

A. Yes, sir.

Q. Those are the most important things in the business, aren't they, to get an enameling powder and a good slush?

A. They are the most important things that we have; yes, sir; without a good slush and a good enamel there would be no use in going into the sanitary manufacturing business.

Q. And a good enamel, you say? A. Yes, sir.

Q. A great deal of study has been given to those two things since the first enamel ware was made in 1884? A. Yes, sir. 1

Q. A great many of the improvements in the ware are due to changes in the powder and in the slush, aren't they?

A. Well, yes; we can make things at the present time with our process of enamel, having a less tendency to chip or craze than we could at those times. We are more versed along the line of enamel.

Q. When you left the Colwell Lead Company, were they using the hand dredge?

THE WITNESS: When I left the Colwell Lead?
MR. GROSVENOR: Yes. 2

A. When I left they were using the pneumatic in the daytime, and the old banjo, as they called it, at night.

Q. That was in September, 1910? A. Yes, sir.

Q. How many furnaces had they?

A. They had three when I was there.

Q. Were they running them all?

A. They were running them all when I left; yes, sir.

Q. At night, I suppose by using the hand dredge, they saved the expense of running the compressed air plant?

A. That was the idea, to cut out the expense of running that plant at night just for the enameling department. 3

Q. When did they install the pneumatic dredger for use during the daytime at the Colwell Company?

A. I went there in June—I think as near as I remember along the latter part of August or the forepart of September; I won't be positive of that, of course.

Q. In 1910? A. In 1910.

Q. In any event you do recall—

THE WITNESS: Just one minute, please. This is 1911—no, that was in 1909; I went there in June, 1909, and left there September, 1910. 4

Q. You installed, then, the pneumatic dredger shortly after you went there?

A. Yes, sir.

Q. And they were using it until you left, in the daytime?

A. Yes, sir.

Q. And during all this time were they using the hand dredge at night? A. Yes, sir.

Q. Now, at the Humphryes Manufacturing Company,

when you went there in September, 1910, what were they using? A. Using the pneumatic sieve.

Q. How many furnaces have they?

A. They have five, and we are running three at the present time.

Q. You use pneumatic sieves both night and day?

A. We use the pneumatic sieve both night and day.

Q. And you have since you have been there?

A. Have since I have been there.

Q. On the occasion of your earlier work, with the Humphryes Company, that is the other time you were there, they were using an electric dredger, weren't they?

A. Yes, sir; an electrical dredger part of the time and the pneumatic sieve part of the time.

Q. What year was that?

A. That was fourteen months previous to September 4, 1910.

Q. That is, in June, 1909, you went to the Colwell and before that you were with Humphryes? A. Yes, sir.

Q. How long? A. Two years and a half.

Q. And during all that time they were using an electrical dredger and a pneumatic? A. And a pneumatic; yes, sir.

Q. That is the Arrott dredger? A. Yes, sir.

Q. Is it not a fact that good enameled ware may be made with the hand dredge?

A. As I remarked in my evidence here, you might possibly make one good piece of enameled ware by the hand process, but you cannot turn out the production and turn it out as good as we can with the pneumatic sieve.

Q. That is, the average is better with the pneumatic sieve?

A. Yes, sir.

Q. The great disadvantage of that short-handle dredge is the fact that it brought the workmen so near the hot tub, is that true?

A. Well, that was one of them; it doesn't give you an even distribution of powder.

Q. I am talking now of the effect upon the workmen?

A. Yes, sir; that was one.

Q. And the weight was the other? A. Yes, sir.

Q. And the tapping was the other?

A. Yes, sir; and the cramped position.

Q. With the long-handle dredger you got further away from the tub?

A. Yes, sir; with the long-handle dredger you got further away from the tub, but you could not see the work as well. 1

Q. But you were still relieved of the extreme heat?

A. Yes, sir.

Q. With the Arrott dredger you stand nearer than with the long-handle dredger? A. Yes, sir.

Q. The weight of the Arrott dredger is supported like the weight of the long-handle dredger, with the counter-balance?

A. No, sir; we use ours without a counter-balance, no counter-balance at all with the pneumatic sieve.

Q. Even for the heavy work?

A. For anything, tubs or smaller ware. 2

Q. When you were with the Colwell Lead Company, who had charge of the enameling department?

A. The mixing of the enamel, Mr. John A. Lefferts.

Q. He was your superior? A. Yes, sir.

Q. Who was the head of the factory?

A. Dr. Jesse Duryea.

Q. Was he frequently at the factory?

A. No, sir; occasionally in maybe two months.

Q. He did not have actual supervision of the making of the ware?

A. No, Mr. Lefferts and I were the only two that had anything to do with the supervision of the enameled ware. 3

Q. Did you ever see Dr. Duryea out there while this hand dredge was being used at night?

THE WITNESS: At night?

Mr. GROSVENOR: Yes.

A. No, he never came at night that I know of.

Q. Did you ever see him out there when the hand dredge was being used?

A. I suppose after I had been there three weeks he came over there one day and went through the enameling department, and I suppose he saw them using it, because they were working then. 4

Q. That was the hand dredge? A. Yes, sir.

Q. Any later time?

A. Any later time that he came out there during the day they were using the pneumatic.

Q. Did you see him there during the nighttime at any time?

A. I never saw him there during the night time, because I was not there myself.

Q. Did you talk to him about the saving of expense by using the hand dredge at night and turning off the compressor?

A. I did not talk to the doctor, but I spoke to Mr. Lefferts along that line.

Q. And he agreed with you that it should be done?

A. Yes, sir.

Mr. GROSVENOR: I believe that is all.

RE-DIRECT EXAMINATION BY Mr. CHRISTY:

Q. You have referred to the chipping and crazing of the enamel; has the evenness of the enamel anything to do with that?

A. It has along the edge of any ware we make. If the enamel is heavy on the edges it has more of a tendency to chip, or around the overflow or the outlet of any work.

Q. Wherever the enamel is bunched it has a tendency to chip? A. Yes, sir.

Q. How about the crazing?

A. Well, if the enamel is too heavy it has a tendency to lift, that is worse than the craze. If you get the enamel on too heavy, it pulls the flush coat from the enamel. It is not a chip or a craze but it is a lift.

Q. And the pneumatic sieve improved these conditions?

A. Yes, sir; because we could get the enamel on more evenly and quicker.

Q. When you used the hand sieve, in firing the ware after the enamel was applied, was it your experience that you had to flow it in the furnace?

A. With the old hand sieve the unevenness of the vibration would cause our enamel to—what we call—bunch.

BY Mr. GROSVENOR:

Q. Which hand sieve are you talking about?

A. The short handle.

Q. Not the long handle?

A. No, sir; and as you have remarked, we did very often have to give the ware a little more firing to fetch it down to a smooth surface.

Q. With the long handle sieve did the enamel bunch?

A. The greatest trouble I found with the long handle sieve was that you were too far away from your work to see if you were doing it right or not. If a piece of dirt got in there, or a piece of asbestos, you were not close enough to see it until after it was fired. 1

Q. Yes, I know that was a defect, but in using the long handle sieve, didn't you get bunches of enamel?

A. Yes, sir; in the way we had it adjusted it was just as bad as with the short-handle hand sieve.

Q. That is as regards the bunching and so forth?

A. Yes, sir. 2

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. What is the full name of Mr. Lefferts?

A. John A.; I couldn't tell you what that middle name is.

Q. Is that dredge which you used in the nighttime the so-called Lefferts' dredge?

A. I couldn't tell you that; it is identical with that sieve that you have there with the strap attached.

Q. This is the one which you identified (indicating)?

A. Yes, sir.

Q. Is that known as the banjo dredge? A Yes, sir.

Mr. GROSVENOR: I offer this dredge as Petitioner's Exhibit No. 284. 3

Dredge referred to was then marked and filed as "Petitioner's Exhibit No. 284."

Q. Now, Mr. Varley, if the advantages of this pneumatic dredger over the banjo dredge are so great, why did you use the banjo dredge during that entire year at night?

A. Well, I had nothing to do with the saying of whether we should run the engine at night or whether we should not; that was left to Mr. Lefferts himself. You see, it would have been an expense—we would be running the engine for part of the time two furnaces and part of the time three—that would be an expense that would be too much. 4

Q. Too great to compensate for the difference between the two dredges?

A. Well, in fact, I don't know about that.

Q. You received your orders from him?

A. Yes, sir; that is in regard to changes of that kind. With regard to work I had full charge of that.

Mr. GROSVENOR: That is all.

1 RE-REDIRECT EXAMINATION BY Mr. CHRISTY:

Q. What was the rated horse-power of your boiler at the Colwell Lead Company? A. I don't know.

Q. It was sufficient to run a good many more pneumatic sieves than you were using, wasn't it? A. Oh, yes, yes.

Q. So that if it should be thought to have been an unnecessary expense to keep your boiler going at night for two or three furnaces, it would not follow that if you had six or eight furnaces the same thing would be true?

A. No, I would think if we had six or eight furnaces working at night we would certainly have run the boiler to
2 keep the pneumatic sieve running.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

ANDREW RAMMING, a witness of competent age, produced on behalf of the Defendants, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. CHRISTY:

3 Q. State your full name, age, residence and occupation?

A. Andrew Ramming, 68 Toboggan Street, North Side, Pittsburg, Pennsylvania; age, 45; occupation at the present time, foreman of the small ware enameling department.

Q. Where?

A. At the Standard Sanitary Manufacturing Company at Allegheny.

Q. How long have you been at the Standard works?

A. I have been at the Standard works for eighteen years.

Q. What have you done there? A. Enameling.

Q. You have been an enameler, have you? A. Yes, sir.

4 Q. How long have you been a foreman?

A. Three years this June.

Q. Did you use the hand dredge at the Standard Works in the early days? A. Yes, sir; I used the hand dredge.

Q. Was it like Petitioner's Exhibit No. 278?

A. Yes, sir.

Q. Did you say how long you used it?

A. I am not quite sure, about eight or nine years, I judge.

Q. Then what did you do?

A. Turned from the hand dredge to the air dredger.

Q. What they call the Arrott dredger? A. Yes, sir. 1

Q. That is like Petitioner's Exhibit No. 280?

A. Yes, sir.

Q. How did you find the work of the Arrott dredger compared with the hand dredge?

A. After I got used to it, it was much easier.

Q. Was it less labor?

A. Yes, sir; and less exertion; with the hand dredger you had to use both arms, both hands, hold the dredge with one hand and rap it with the other hand.

Q. And that was hard work, was it?

A. Hard work; yes, sir. 2

Q. How about the ware you produced, could you make more with the pneumatic than with the hand? A. Yes, sir.

Q. Can you give us any idea how much?

A. Well, on some ware you can make, I guess, about one-half as much again.

Q. Does that apply to bathtubs?

A. I am not quite sure, I never worked on bathtubs.

Q. You worked on small ware entirely? A. Yes, sir.

Q. How did you find it with regard to the coat? Did you improve the coat any? A. Yes, sir.

Q. In what way? A. Made it smoother. 3

Q. That was an advantage?

A. Yes, sir; and you could put the powder on quicker.

Q. How about your losses, did you lose as much with the pneumatic as with the hand dredge? A. No, sir.

Q. Enough to be noticeable?

A. No, sir; we did not lose as much.

Q. I mean was the difference between the two noticeable?

A. Yes, sir.

Q. Using the hand dredge did you ever have trouble with your arms giving out?

A. Yes, sir; my arm would get sore from here to here 4 (indicating).

Q. That is your left arm? A. Yes, sir.

Q. That is the one you held the dredge on?

A. Yes, sir; it was so sore sometimes that when I came to work in the morning I could hardly hold the dredge.

Q. How about the tapping?

A. With the tapping my arm would get sore too.

Q. Could you keep up the pace all over the tub?

A. I could, that is on small ware.

Q. You never enameled tubs? A. No, sir.

Q. How about taking new men and teaching them to enamel, how did the dredges compare on that?

A. Well, on small ware it is pretty hard to break in a man; it was pretty hard with the hand dredge; it would be hard to get the right swing on it and get the powder on even in all places. You would get too much and not enough. You would have only one hand to guide it and it would swing too far and make it heavy in the corners.

Q. How was it with the pneumatic, was it simpler?

A. With the pneumatic it was more simple.

Q. You can teach the men quicker?

A. Yes, sir; you can teach the men quicker.

Q. How about the inspection nowadays, is it more severe than when you used the hand dredge? A. Yes, sir.

Q. Do you think the average quality of ware which you made with the hand dredge could pass inspection regularly now? A. I don't believe it.

Q. What objection do you think would be made to it?

A. It would not have a smooth enough surface on it.

Q. That is, it would be wavy? A. Yes, sir.

Q. Do you know whether you use as much enamel now as with the hand dredge? A. We do not use as much now.

Q. Take some article like a laundry tray, how many would you turn out with the hand dredge?

A. With the hand dredge we used to make sixteen to eighteen in ten hours, and if luck was good, sometimes twenty.

Q. How many of those could you make with the pneumatic dredge?

A. With the pneumatic dredge we could approximate thirty-two or thirty-four.

Q. Does that relative difference hold good with other articles?

THE WITNESS: What was that?

Q. Does that proportion hold good as to other articles?

A. Well, it depends a great deal on the man.

Q. Some men will work better than others. A. Yes, sir.

Q. Take sinks, about what was the average for a turn of ten hours? A. I mean with the hand dredge?

A. We made twenty or twenty-four.

Q. Can you give us the average of the same sinks with the pneumatic? A. Well, thirty-five or forty. 1

Q. In eight hours, that is? A. In eight hours.

Q. How about the wages of the men, do they make as much now as they used to?

A. They make about as much with more production.

Q. Piece price has been reduced?

A. Yes, sir; piece price has been reduced.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Ramming, did you take part in the negotiations on behalf of the Standard Sanitary Manufacturing Company which resulted in the license arrangement with Mr. Wayman? 2

THE WITNESS: How was that?

Mr. GROSVENOR: Will you read it?

The stenographer then read the last question.

Mr. GROSVENOR: I mean, did you know anything about the fact that this patent was going to be assigned to Mr. Wayman?

A. I did not know anything about it.

Q. You did not know anything about it until you read it in the papers afterwards, is that it? A. That is right. 3

Q. Do you have charge of the making of the powder?

A. No, sir.

Q. Or the slush? A. No, sir.

Q. Are those important matters?

A. Important matters; yes, sir.

Q. Does the man who has charge of the making of the powder, that is the mixer, get more wages than the foreman in the enameling department?

A. That is something that I don't know.

Q. You made good laundry trays and sinks when you used the hand dredge, didn't you? 4

A. Yes, I used the hand dredge on sinks and laundry trays.

Q. And you made good laundry trays?

A. Good at that time; if they are good now I do not know.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

At this point the taking of evidence was adjourned until 1 P. M.

March 30, 1911.

1 o'clock P. M.

At one o'clock P. M., a further adjournment was taken until 3.15 P. M.

March 30, 1911.

3.15 P. M.

Mr. CHRISTY: Mr. Christy stated that he had expected to examine another witness this afternoon, but has been disappointed in not being able to find him. He therefore suspends the further taking of testimony at this session and requests the Examiner to note an adjournment to meet upon notice.

Mr. GROSVENOR: Counsel for the Government will be ready to proceed on notice by telegram or otherwise.

THE EXAMINER: If you can find your witness, Mr. Christy, any time this evening up until seven thirty, we will be in Pittsburg and can go on tomorrow.

Mr. CHRISTY: Very well, I will telephone you by seven thirty.

Adjourned.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Pittsburg, Pa., Federal Building, 2

March 31, 1911.

Mr. Christy having found late in the afternoon on March 30, that his witness could be produced this morning and notice to that effect having been given, the parties met by agreement, at 10 o'clock A. M., in the Federal Building, Pittsburg, Pa., and the following evidence was taken:

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General. 3
MARSHALL A. CHRISTY, Esq.,
on behalf of the Defendants.

JAMES W. ARROTT, JR., a witness of competent age, produced on behalf of the Defendants, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY MR. CHRISTY:

Q. State your name, age, residence and occupation?

A. James W. Arrott, Jr., 41 years of age; I reside at Sewickley, Pennsylvania; I am not occupied in any active business. 4

Q. Were you ever connected with the Standard Manufacturing Company at Allegheny, and if so, during what period and in what capacity?

A. I was, from the year 1890 until the formation of the Standard Sanitary Manufacturing Company, in 1900; during that time I was superintendent—or the greater part of that time—I was superintendent of the enameling department of the Standard Manufacturing Company.

Q. When did the Standard Sanitary Manufacturing Com-

1 pany commence to operate the Standard Manufacturing Company plant? A. January 1, 1900.

Q. Did you continue with that Company, and if so, in what capacity?

A. I continued with that Company as general superintendent of the Standard Works in Allegheny; that is, it was called the Standard Works after the consolidation, and I continued with them until June, 1901.

Q. Have you been actively engaged in the enameling business since that last date?

A. After that date, with my brothers, we built a plant
2 at Monaca, Pennsylvania, known as the United States Sanitary Manufacturing Company. I stayed with that concern until some time in 1903, when I retired from the business.

Q. You are the inventor and the patentee of the letters patent No. 633,941, are you not? A. I am.

Q. About when did you make this invention and put it in use?

A. I invented the pneumatic dredger in the early part of 1898, that is, the experiments were carried on at that time. It was gradually put into use during the year 1898, and by the first of January, 1899, the entire enameling department
3 of the Standard Manufacturing Company was equipped with this pneumatic dredger.

Q. What were the conditions in the enameling department, that is particularly the way of applying the enamel to the ware, immediately prior to the making of this invention?

A. The conditions before the introduction of the pneumatic dredger were that the enamel was applied by the old style original hand dredge; the production had increased so that the men were not able to keep up with their work. The method of applying the enamel by the old dredge was very severe on the enamelers, so much so that we were en-
4 deavoring to obtain something to relieve them; not only to relieve them, but to, if possible, keep up the capacity of the plant.

Q. What particular difficulties had the men in using the old hand dredge?

A. The worst difficulty was that it affected the muscles of their arms. They held the dredge with one arm or one hand and arm, and rapped it with the other, and in doing so they exerted themselves continuously, so that under cer-

tain conditions they played out and were not able to continue their work. 1

Q. Did you find that the pneumatic dredger helped any as regarded these matters?

A. It did; it relieved these matters at once.

Q. Did it enable the men to make more goods than formerly? A. The production was increased immediately.

Q. Did you find that it made any saving in the enamel itself? A. Yes, there was considerable saving.

Q. Did you make any computations at that time to find out what this saving was?

A. I did, after the year 1899 I had kept records for several years of the amount of enamel used, the wages, etc., and in comparing the costs of these different things for the year 1899 I found that the cost was considerably decreased while the production increased. 2

Q. Can you give the figures which you computed at that time showing the reduction in cost of enamel actually used?

A. I have some figures which I took from my former testimony; I did have others, but I don't know that they are available now; but I have figures in regard to the saving in dollars and cents in amount of enamel used only on bathtubs. I find that in 1899 on 32,114 white enameled bathtubs finished there was a saving of 4.1 pounds of enamel per tub, equalling 37.9 cents per tub, or a total of $12,171.20. On another grade of bath tubs known as gray bath tubs, the saving was 3 pounds of enamel per bath tub, equalling 18 cents per tub, and on the total of 9,518 tubs produced the saving was $1,713.24. The total saving on both kinds of bath tubs in enameling materials was $13,884.44 in the year 1899 over 1898. 3

Q. Did the adoption of the pneumatic dredger improve the quality of the ware? A. It did.

Q. In what respect? 4

A. The most noticeable respect was the smoothness of the enamel.

Q. How was it with the old dredge?

A. With the old dredge, well, some enamelers at times could produce very nice ware, yet taking it all in all, the enamel was irregular and we had to accept ware that was not evenly enameled. With the pneumatic dredger the ware, as a whole, was more uniform and of better quality, better appearance.

1 Q. Did the adoption of the pneumatic dredger render possible improvements in furnace capacity, and if so, how?

A. Yes, it did; at the time the pneumatic dredger was adopted and in fact before that, the capacity of the furnaces was greater than what the men were able to take care of, so that as soon as they were able to take care of the capacity of the furnace, the capacity of any furnace could be increased, and after that improvements were made on furnaces that still further increased the output per furnace.

Q. But could those improvements have been economically availed of without the pneumatic dredger?

2 A. I don't believe they could. I don't believe the men would have been physically able to take care of this increased product.

Q. Some question was raised with one of the witnesses here as to the date when the pneumatic dredger was introduced at the Dawes & Myler plant at New Brighton. Can you fix this date approximately?

A. I remember sending to the Dawes & Myler Works at New Brighton the pneumatic dredger similar to those we used at the Standard plant, and this was in January, 1900.

Q. That was immediately after the organization of the

3 Standard Sanitary Manufacturing Company?

A. That was shortly after the organization.

Q. Did you visit the Dawes & Myler Works personally at that time? A. I did.

Q. What kind of dredge were they using there?

A. They were using a hand dredge suspended by a rope or wire, I don't know which, over a pulley. The dredge was considerably longer than those hand dredges we had used at the Standard Works.

Q. I show you Exhibit No. 278; is this the style of bath tub dredge which you used at the Standard plant at Alle-

4 gheny?

A. Yes, sir; that (indicating) is practically the same.

Q. I show you Petitioner's Exhibit No. 279; is that the style of dredge which you saw at the Dawes & Myler plant?

A. That looks like it.

Q. What advantages and disadvantages did the long handle dredge, used at the Dawes & Myler Works, have in comparison with the dredge you used?

A. The only advantage I could see with the long handle dredge was that it removed the enameler farther from the

hot casting; otherwise, I think it was a great disadvantage over the short handle dredge which we formerly used at the Standard Works. 1

Q. In what respect was it disadvantageous?

A. Well, it was awkward; it was difficult to move over the surface of the bathtub or any casting being enameled. It was harder to control. It required a harder rap, because the enameler was farther away from the sieve, and he would have to hit harder to communicate the vibration to the sieve than with the short dredge.

Q. One other matter incident to the adoption of the pneumatic dredger: Did it lead you to change the mesh of the sieve? A. It did. 2

Q. How did you change it and with what results?

A. Formerly the wire mesh cloth was No. 40; that is, forty holes to the inch; and after we adopted the pneumatic dredge I changed the wire cloth to that of 50 mesh to the inch, and also had the enamel ground finer. The object was to get a solider enamel, a finer enamel, and also that it would be distributed in smaller particles over the iron surface.

Q. Did that improve the product?

A. Undoubtedly that would improve the product, because it follows that the coarser the enamel is it will be of an inferior grade. 3

Q. Would that change have been practical with the old hand dredge? A. No, it would not.

Q. Why?

A. Because it would have put more work on the enameler, and he already had enough to do in driving the enamel through the coarser mesh, and to compel him to drive it through a 50 mesh cloth, he would have had to exert himself that much more.

Q. What would you say as to the value to the enameling business of this pneumatic dredger? 4

A. Well, from my knowledge of the business today, I would say that it is indispensable; in dollars and cents I could not compute it, because I am not familiar with the business today, but I will say this, that if I were to go into the business today, I would not attempt to do so unless I could use the pneumatic dredger or something equally as good.

Mr. CHRISTY: I think that is all, Mr. Grosvenor.

1 CROSS EXAMINATION BY Mr. GROSVENOR:

Q. After you had invented the dredger, Mr. Arrott, you took out the patent for the invention in your own name?

A. Yes, sir.

Q. How long did you retain the patent as your own property?

A. Well, now, sir, I cannot remember the exact date of transfer.

Q. Give it approximately?

A. Well, I would say about 1905.

Q. Did you license the Standard Manufacturing Com-
2 pany to use the patent?

THE WITNESS: The old Standard Manufacturing Company?

Mr. GROSVENOR: Yes.

A. I did not.

Q. You gave them the free use of it, did you?

A. No, sir; not as I understand it.

Q. What arrangement did you have?

A. We had an arrangement that they were to compensate me for the invention, but we never had the transfer of any
3 papers authorizing them to use it.

Q. They used it, then, until the organization of the Standard Sanitary Manufacturing Company on January 1, 1900?

A. Yes, sir.

Q. Did you get anything for it up to that time?

A. No, sir.

Q. Then you stayed with the Standard Sanitary until how long? A. Until June of 1901.

Q. Six months? A. A year and six months.

Q. Did you get anything at that time? A. No, sir.

Q. Either by way of royalty or contract? A. No, sir.

4 Q. In June, 1901, you started, with your brothers, the United States Sanitary Manufacturing Company?

A. After that; yes, sir.

Q. About what time?

A. Well, I would say within two months; in August, 1901, we started to organize a company and build this plant at Monaca, Pennsylvania.

Q. How long did you stay with the United States Sanitary Manufacturing Company?

A. I stayed with them until 1903, I would say about February or March. I did not just quit at one day; it was a gradual dissolving of relationship. 1

Q. Was the United States Sanitary Manufacturing Company using the Arrott patent while you were there?

A. It was.

Q. Did you remain a stockholder? A. No, sir.

Q. Have they used the Arrott dredger continuously since that time? A. I believe so.

Q. You were not getting any royalty of any sort from either the Standard or the United States at that time?

A. No, sir. 2

Q. The question of what you should receive from the Standard was the subject of litigation between you and that Company?

A. Yes, between the Standard Sanitary Manufacturing Company and myself there was litigation.

Q. Were you the Plaintiff?

A. Yes, sir; if I am not mistaken. There may have been cross suits, but that was the principal one.

Q. As a result of that suit, how much money did you receive from the Standard for that patent?

THE WITNESS: From the Standard Sanitary Manufacturing Company? 3

MR. GROSVENOR: Yes.

A. I received $35,000.

Q. Did the United States Company pay you anything for the use of the patent?

A. Indirectly they did, but not for a license.

Q. You mean by employing you as an officer?

A. No, sir; after the litigation with the Standard Sanitary Manufacturing Company was arranged and settled and they had paid me, then the United States Sanitary Manufacturing Company paid me a sum voluntarily. 4

Q. For the use of the patent?

A. Well, they already had a license to use it.

Q. From whom did they obtain that license?

A. From me, while I was with them.

Q. Then, for this $35,000 you assigned your interests in the patent to the Standard Sanitary Manufacturing Company, is that right?

1 A. As far as money is concerned, that is right. There were other considerations.

Q. What others, for instance?

A. One was that they would drop all suits that they might intend to bring against my father's estate—

Q. (Interrupting): Well, I don't want to go into your personal affairs. This $35,000 was, in substance, what they paid you for the entire rights in the patent? A. Yes, sir.

Q. Did they then issue a new license to the United States Sanitary Manufacturing Company? A. Not that I know of.

Q. But the United States has continued to use it?

2 A. They have.

Q. Did you consider that $35,000 a fair value to be placed on the patent? A. No, sir.

Q. You considered it too little? A. Yes, sir.

Q. Were you present at any of the meetings during 1909 or 1910 that led up to the formation of this licensing arrangement with E. L. Wayman? A. No, sir.

Q. Did you know anything about it?

A. Except by hearsay.

Q. You talked with some of the persons interested?

A. I did.

3 Q. Name some of them?

A. I talked with Mr. Wayman, Mr. Cline, Mr. Torrance, Mr. Ahrens, my brother, Charles F. Arrott, and possibly some of the salesmen, just as I happened to meet them.

Q. This was in the latter part of 1909 or the early part of 1910? A. I would say the early part of 1910.

Q. What was the substance of your conversation with Mr. Ahrens?

A. The conversation I had with Mr. Ahrens was that I asked him the question what the object of this agreement was, whether it was to advance prices, and he said, No, it was not.

4 That was about all I said to him.

Q. Did you ask him any further questions?

A. No, I did not.

Q. Do you remember what month of 1910 that was?

A. That was five months ago; that was in October, after the directors' meeting in October, 1910.

Q. After the Government had instituted the suit?

A. I cannot say that.

Q. Are you a Director of the Standard? A. I am.

Q. Are you a Director of the United States Sanitary?

A. No, sir. 1

Q. Have you been present at most of the meetings of the Directors within the last year or two? A. Yes, sir.

Q. Was that assignment of the patent to Wayman authorized at any meeting of the Directors of the Standard?

A. No, sir.

Q. Was the subject mentioned, as far as you recall?

THE WITNESS: The assignment of the patent?

MR. GROSVENOR: Yes.

A. No, sir.

Q. Was the subject of the license arrangement mentioned 2
at any of the meetings? A. It was mentioned at one meeting.

Q. By whom?

A. If I remember correctly, Mr. Ahrens stated that any of the Directors who were not familiar with what was going on, if they would come back in the afternoon they would have a meeting of the Directors and explain the matter to them.

Q. When was that, April, 1910?

A. That was the meeting of April, 1910.

Q. This was at a meeting of the Directors? A. Yes, sir.

Q. And he said that if the Directors would come back in
the afternoon he would discuss the matter with them? 3

A. Yes, sir.

Q. Did he say anything further about it? A. No, sir.

Q. How did the subject come up?

A. Really, I could not explain how the subject came up.

Q. Is that the only meeting of Directors at which the matter was ever discussed, that is the licensing arrangement I am referring to?

A. That was the only meeting it was ever discussed, and I might say it was not discussed then.

Q. Or mentioned? A. It was simply mentioned.

Q. Now, what conversation did you have with Mr. Tor- 4
rance respecting this licensing arrangement? State when and the substance of it?

A. I cannot state when it was. I meet Mr. Torrance frequently, and always ask him how business is, and I may have asked him, "Well, how is this arrangement progressing?"

Q. When was this?

A. That might have been at any time during the last year, or more than once.

1 Q. When did you first hear of this arrangement, and from whom?

A. I could not say. I could not remember that particular part of it.

Q. Do you know how much the Standard has paid E. L. Wayman for the use of this Arrott patent since they assigned it to him? A. I do not.

Q. Doesn't the Board of Directors consider any such matters?

A. They did not. They were not given an opportunity.

Q. The Executive Committee of the Standard Sanitary
2 has practically direct and entire management of the Company, has it not?

A. Yes, sir; although several of the Directors are active in the operation of the different plants.

Q. By that you mean like Mr. Reed they are officials or employees? A. Yes, sir.

Q. But the Executive Committee, composed of Mr. Ahrens, Mr. Torrance, Mr. Dawes and Mr. Myler, has entire control of the policy; is that right? A. I believe so.

Q. What they say goes, in other words? A. Yes, sir.

Q. Are you familiar with the terms of the license arrange-
3 ment or agreement which the Standard entered into with Wayman? A. No, sir.

Q. Do you know that the Company assigned the patent for $10,000, and also agreed to pay him at a rate that amounts to between thirty and forty thousand dollars a year for the use of the patent? A. No, sir.

Q. That was handled by the Executive Committee, was it? A. I believe so.

Q. You have no position, either as Director or otherwise in the United States Company at this time? A. No, sir.

Q. Who is the active man in charge of the United States
4 Company?

THE WITNESS: Of the United States Company?

Mr. GROSVENOR: Yes.

A. A. H. Cline, Jr.

Q. What talk did you have with Mr. Cline about the agreement?

A. Well, I could not repeat any talk that I had. It would be very difficult.

Q. Did he say why he was going to?

A. I don't believe he told me why he was going into it, further than he thought it would be a good thing for the manufacturers and for the jobbers. 1

Q. Why would it be a good thing, did he state?

A. No, he did not; he did not.

Q. Did he say anything about the patent?

A. No, he did not, that I can remember.

Q. What did Wayman say about it? What talk did you ever have with him?

Mr. CHRISTY: Note that Mr. Christy objects to this line of examination, as whatever these parties may have said are not admissions or otherwise evidence in this case. 2

A. Well, most of my talk with Mr. Wayman was after this litigation came up. I met Mr. Noble, I believe it was, with Mr. Wayman, and they both talked to me about this patent, or rather about the use of the pneumatic dredger. They were after my ideas as to what use and what good it was.

Q. Your brother is President of the United States Company, Mr. Charles F. Arrott, is he not? A. I think he is.

Q. But the active management of the Company is left to A. H. Cline, is it not? A. Yes, that is my impression. 3

Q. Now, this Arrott dredger is a decided improvement upon the old hand dredge, is it not? A. It is.

Q. You were, however, under the hand dredge manufacturing merchantable sanitary ware, were you not?

A. Yes, sir.

Q. And the Standard Manufacturing Company at June 1, 1900, and after that the United States Sanitary Company and all these companies had an extensive business and trade in sanitary enameled ware which was manufactured by the hand dredge? Leave out the United States Company, because you testified that the United States used only the pneumatic dredger, but the Standard had a large and extensive trade in ware manufactured by the hand dredge, is not that right? A. That is correct. 4

Q. Now, when you said that in your judgment that Arrott dredger was indispensable, you meant, did you not, that in order to enable one manufacturer to compete successfully with another manufacturer in making and selling this ware, he ought to have the Arrott dredger; is not that right?

A. I believe he should.

1 Q. You did not mean to imply that it was impossible to make ware without the Arrott dredger?

A. No, sir; not absolutely.

Q. That is the Arrott dredger is economical?

A. Yes, sir.

Q. That is one of its characteristics? A. Yes, sir.

Q. It is useful and also valuable? A. Yes, sir.

Q. But in order to make ware it is not essential?

A. I believe it is to these concerns that I am familiar with, the Standard Sanitary Manufacturing Company and the United States Company.

2 Q. Why is it essential, if they could make ware without it, except as I have indicated, that it is economically useful?

A. What I mean is, if they were deprived of the use of the pneumatic dredger, they would have to re-organize their entire enameling plant.

Q. Did you have charge of the making of the enameling powder? A. Yes, sir.

Q. Do you consider that an important feature of the business? A. Quite important.

Q. It is very important? A. Yes, sir.

Q. It has required long years of study and development,

3 has it not? A. It has.

Q. If the Standard was deprived of the use of the formulas for making the powders and were prevented from making these enameling powders as they are making them today, would not that also very largely derange their business? A. I believe it would.

Q. Now, as to the slush coat; is not the making of the slush an important feature of the business?

A. Very important.

Q. That has perhaps changed more than any other feature of the business in the last fifteen years, has it not, that

4 is, in the application of the slush?

A. Not in the application, but in the composition.

Q. And in the firing? A. Yes, sir.

Q. Now, supposing the Standard Sanitary Manufacturing Company was deprived of the privilege and opportunity of making and firing the slush coat, as it does today, and it was relegated to the methods employed fifteen years ago, would that derange their business? A. That would stop it.

Q. It would stop it? A. Yes, sir.

Q. That is in the last fifteen years there have been great

developments in the business along other lines as well as in the application of the powder through the Arrott dredger? 1

A. Yes, sir.

Q. Have you a copy of the agreement between yourself and the Standard, under which the Standard paid you that $35,000? A. I believe I have; I should have.

Q. Will you permit counsel to let me see it at the next hearing? A. Yes.

Q. Can you give me an opinion as to the value of the Arrott patent in the business today, or has the fact that you have not been actively engaged within the last seven years in the business prevented you from acquiring an opinion of its value today, I mean in dollars and cents? 2

THE WITNESS: I don't think I could place a value on it. You mean to the entire enameling business throughout the country?

Mr. GROSVENOR: Yes, what would you consider it worth today, if you controlled it today?

Mr. CHRISTY: Objected to as merely calling for speculation.

A. I haven't any idea.

RE-DIRECT EXAMINATION BY Mr. CHRISTY: 3

Q. In order to make plain some matters spoken of on cross examination, I want to ask you a few questions about your settlements with the Standard Sanitary Manufacturing Company and the United States Company. You referred, in answer to one of Mr. Grosvenor's questions, to a further consideration above the sum paid you by the Standard, in respect to quieting possible litigation between the Standard and your father's estate. If that had directly to do with this dredger, I wish you would explain what you had in mind?

A. It had to do with this dredger and this settlement for this reason: That I was a stockholder in the Standard Sanitary, and my father's estate, of which I am one of the Trustees, was the largest individual stockholder of the Standard Sanitary Manufacturing Company. While I believe I was entitled to the consideration which I got, yet I was friendly with the officers of the Standard Sanitary Manufacturing Company, and that had a bearing on the settlement. I wished to have it closed up, and I accepted what they offered me. 4

Q. And one other point; it was also true, was it not, that the Standard Sanitary Manufacturing Company considered that the former principal owners of the Standard Manufacturing Company, that is, your father and Mr. Torrance, should bear the expense of this settlement with you, and the litigation which you wished to avoid was their insisting upon that point as against your father's estate?

A. That is correct.

Q. Now, as to the United States Company, the license which you gave them was a license merely to the partnership as it then existed, and not transferable to any successor?

A. That is correct.

Q. And when you made your settlement with the Standard, you expressly reserved and notified them of the license which you had given to this partnership?

A. I believe that is correct.

Q. You said, in answer to one of Mr. Grosvenor's questions, as I understood it, that after the organization of the Standard Manufacturing Company it still did a large business in articles enameled by the hand dredge? You meant by that before the Arrott dredger was put in, is not that correct?

A. Yes, I referred to the time before the pneumatic dredger was put in.

Q. Although, as you have testified, the composition of the enamels and slush coats are matters of importance in the enameling business, does that in any way affect your testimony and your views as to the value of the pneumatic dredger? A. No, sir.

RE-CROSS EXAMINATION BY MR. GROSVENOR:

Q. Going back to that $35,000, was that paid in part for your covenant not to continue in the business? A. No, sir.

Q. It was entirely for the Arrott patent? A. Yes, sir.

Q. Your license to the United States Company, then, was a personal license to the partnership, was it? A. It was.

Q. And terminated when? A. I couldn't say.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

The taking of evidence was then adjourned subject to notice of next hearing.

Adjourned.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

vs.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Federal Building, Philadelphia, Pa., 2

April 4, 1911.

Pursuant to notice, the taking of evidence on behalf of the Defendants was resumed at the Federal Building, in Philadelphia, Pa., on this 4th day of April, 1911, at 10:30 A. M.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq., Special Assistant to the Attorney-General.
HERBERT NOBLE, Esq., 3
ROBERT B. HONEYMAN, Esq.,
on behalf of the Defendants.

MAX GOEBEL, a witness of competent age, produced on behalf of the Defendant, the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Goebel, state your residence and occupation?

Mr. GROSVENOR: Mr. Goebel, I want to make a few 4
remarks to you before you answer any questions. Mr. Goebel, as counsel for the Government I desire to remind you that you are a defendant in this proceeding, which is a suit in equity, brought by the United States to restrain the continuance of an alleged combination and conspiracy in restraint of interstate and foreign trade and commerce in sanitary enameled iron ware, and to prevent and restrain an attempt to monopolize such trade and commerce,

such a suit being authorized by Section 4 of the Sherman Anti-Trust Act. I also advise you that the Sherman Act declares unlawful such combinations, conspiracies and attempts to monopolize and monopolies, and declares what the punishment shall be upon a conviction of a violation of its provisions. This punishment in a criminal case may be a fine or imprisonment or both, in the discretion of the court.

I also remind you that you are also a defendant in certain criminal proceedings instituted by the Grand Jury of Eastern District of Michigan. Two indictments, containing 6 and 4 counts respectively, were returned by that body at Detroit, Michigan, December 7, 1910, or about that time, charging that you and certain other defendants, some being corporations and some individuals, have engaged in a combination and conspiracy to restrain interstate trade and commerce in sanitary enameled iron ware, and have attempted to monopolize that trade. If you are convicted at the trial had on those indictments, which have been brought under sections one and two of the Sherman Act, you are liable to punishment by fine or imprisonment or both in the discretion of the Court.

Under these circumstances, I desire to notify you that the matters, transactions and things respecting which evidence has been introduced and testimony given in this equity suit, both by the witnesses of the Government in support, and by the witnesses of the defendants in disproof, of the allegations of the bill of complaint, are many of the matters, transactions and things respecting which evidence will be given at the trial of the criminal suit at Detroit. That is to say, many of the matters and transactions which have been and are being inquired into in this suit may and probably will be the subject of inquiry and be proven in the Detroit case. It necessarily follows that any testimony that you may give, which is relevant and material here, may and probably will be relevant and material there. Furthermore, as you are a defendant in each case, the testimony which you give here may and probably

will tend to incriminate you and may be used against 1
you in the criminal case, or it may lead to the discovery of other evidence which may be used against you in that suit.

On account of the facts just stated, I feel it is my duty, as counsel for the Government, to warn and caution you, and to advice you that the 5th amendment of the Constitution of the United States protects you from being a witness against yourself in the situation in which you find yourself. You may accordingly refuse to answer any and all questions which may be addressed to you in relation to these 2
matters by any of the counsel for the defendants.

If, however, you decide to testify here, under the expectation and belief that you will receive immunity thereby from any prosecution in respect to the matters which are in litigation, in this suit, and more particularly that you will gain immunity from any punishment in the criminal case at Detroit, I distinctly advise you that testimony given by you under such circumstances will not give you immunity. You have not been and are not now called by the Government and therefore, as counsel for the 3
Government, I warn and caution you that any testimony which you may give will be given at your own risk.

Furthermore, if you have been called as a witness for one or more of the other defendants, and not on your own behalf—and I understand you are now called as witness for the Colwell Lead Company—I advise you that the principles I have stated equally apply. Relying on the protection of the 5th amendment you may refuse to answer every question upon these matters, whether addressed to you 4
by your own counsel, or by the counsel of any of the other defendants. If any counsel for any of the defendants,—such as Mr. Honeyman, counsel for the Colwell Lead Company—on your refusal to answer, insists that you answer, I advise you that if you desire to avail yourself of your constitutional privilege to refuse to answer, and if you intend to rely upon your right not to incriminate yourself, you must still refuse to answer, and thus you must

compel the counsel, so insisting, to bring the matter before the court or judge for hearing. This suit was instituted in Baltimore. Not until a United States judge orders you to answer are you obliged to answer.

In conclusion, I advise you that if you do answer now, you will waive your constitutional privilege and will gain no immunity thereby in the proceedings to which I have referred. You will also subject yourself to cross examination by counsel for the Government at the close of the direct examination, if he should decide to cross examine you.

It has seemed to me only fair to the United States and to you that the position of the Government should be clearly defined and stated to you before you decide to answer any questions in this case. Do you understand what I have tried to make clear to you?

THE WITNESS: Yes.

Mr. NOBLE: Just note that that answer was given in response to a question asked by counsel for the Government and under direction of counsel for the Government.

BY Mr. HONEYMAN:

Q. Now, Mr. Goebel, will you tell us where you live and your occupation?

A. I reside at 190 Berkeley Street, Brooklyn.

Q. And your occupation?

A. I am Secretary of the J. L. Mott Iron Works.

Q. Is that a corporation? A. It is.

Q. How long have you been Secretary of the J. L. Mott Iron Works? A. For about fifteen years and upwards.

Q. You are one of the Defendants in this Bill in Equity brought in the United States Circuit Court for the District of Maryland, by the United States of America, against the Standard Sanitary Manufacturing Company, the J. L. Mott Works and others? A. Yes.

Q. And, as stated by the Assistant Attorney-General, you are one of the Defendants in the Indictment at Detroit?

A. Yes, sir.

Q. What is the business of the J. L. Mott Iron Works?

A. It is selling plumbing materials, heating goods, fountains, vases, wrought iron goods and the selling and setting of tiles, also ranges and heaters. 1

Q. Where is their place of business?

A. At 118-120 Fifth Avenue, New York.

Q. Is the J. L. Mott Iron Works engaged in the manufacture of sanitary enameled iron ware?

A. It is not so directly engaged.

Q. The J. L. Mott Iron Works that you are Secrtary of, and whose business you have just described, is a New York corporation, is it not? A. It is.

Q. Is there a New Jersey corporation of the same name? 2

A. Of a similar name; yes, sir.

Q. Is the New Jersey corporation engaged in the manufacture of sanitary enameled iron ware, so far as you know?

A. I think it is.

Q. But that is a different company from the one that you have described? A. It is.

Q. Do you know the Colwell Lead Company? A. I do.

Q. What do you know about them, in a general way, their business and so on?

A. They are doing a similar business that we do and they are competitors of the J. L. Mott Iron Works. 3

Q. They do not deal in stoves and ranges and wrought iron goods, do they? A. No, sir.

Q. They are competitors of yours in what respect?

A. They are competitors in the plumbing fixture line.

Q. But only in the plumbing fixture line are they competitors? A. Yes, sir.

By Mr. Noble:

Q. In the plumbing fixture line do you include sanitary enameled iron ware?

A. I include sanitary enameled iron ware. 4

By Mr. Honeyman:

Q. How long have you known of the Colwell Lead Company as a competitor?

A. For a great number of years I have known that. I cannot give you the exact number of years, but a long time.

Q. Do you know whether their trade is with the jobbers or plumbers?

A. They sell to the plumbers, the same as we do.

1 Q. Do you know whether their trade is with the jobbers
A. I don't know. I have not heard.
Q. Would you know if they sold to jobbers to a great extent? A. I would, yes.
Q. Do they sell to jobbers to any extent?
A. I don't think so.
Q. Do you know of their selling to jobbers at all?
A. I don't know that of my own knowledge, but they sell to the plumbers just the same as we do.
Q. You never heard of their selling to jobbers?
A. I never heard of their selling to jobbers, no.
2 Q. Do you know where the business of the Colwell Lead Company is, in what locality?
A. Downtown New York; it used to be on Centre Street.
Q. And now it is at Lafayette and Walker Streets, is it not? A. Yes, sir.
Q. Is their business a local business, or do they do business throughout the United States?
A. Their business is merely local, as far as I know.
Q. Did you ever have any conversation with Dr. Duryea or Mr. Tilden, or anyone connected with or representing the Colwell Lead Company, with respect to any patent known
3 as the Arrott patent, used in the manufacture of enameled iron ware? A. I never had.
Q. Were you ever at any meeting where the Colwell Lead Company was represented directly or indirectly, or where the Arrott patent was under discussion in any way?
A. I never was.
Q. Did you ever have any contract or agreement of any kind or description with the Colwell Lead Company on the matter of prices? A. I never did.
Q. Or the J. L. Mott Iron Works, to your knowledge?
A Not to my knowledge,
4 Q. Do you know whether or not the Colwell Lead Company maintained the same prices on sanitary enameled iron ware in the months of May, June and July, 1910, as your Company did?
A. It has been repeatedly reported to me—

Mr. Grosvenor: I object to that as hearsay.

The Witness (continuing): It has been repeatedly reported to me that the Colwell Lead Company was underselling the J. L. Mott Iron Works.

Q. Who reported it to you? A. Salesmen. 1

Q Whose salesmen?

A. Salesmen of the J. L. Mott Iron Works.

Q. Were those reports made to you in the ordinary course of the business of your Company? A. Yes, sir.

Q. Did you ever see this license agreement of Wayman's for these Arrott patent, reported to have been made with the J. L. Mott Iron Works, and set forth in the bill of complaint here? A. I decline to answer.

Q. On what ground do you decline to answer?

A. On the ground that it might tend to incriminate me and in taking the advice of counsel for the Government. 2

Q. That is, you are taking the advice of the Assistant Attorney General?

A. Taking the advice of the Assistant Attorney General.

Mr. HONEYMAN: The Colwell Lead Company has no further questions to ask this witness.

QUESTIONS BY Mr. NOBLE, COUNSEL FOR THE WITNESS:

BY Mr. NOBLE:

Q. In this suit in Baltimore concerning which the counsel for the Government spoke, and as to which Mr. Honeyman 3 also asked you some questions, did you make an answer, and did the J. L. Mott Iron Works also make an answer to that suit?

A. Yes, sir.

Q. Was that answer made under oath? A. It was.

Q. Do you recall the day that you verified it?

A. Yes, sir; it was the 30th of September, 1910.

Q. Are the matters and things referred to in the petition filed by the Government in the civil suit in Baltimore, alleged to be breaches of the law, and the matters and things referred to in the indictments filed at Detroit, on or about December 4 7, 1910, substantially the same thing? A. I think they are.

Q. Were you subpœnaed in the suit in Baltimore to make answer in that case? A. Now, I have been subpœnaed, yes.

Mr. GROSVENOR: I object to that term "subpœnaed."

Q. You were subpœnaed to come here today? A. I was.

Q. On whose behalf were you subpœnaed?

A. By the Colwell Lead Company.

LLOYD G. McCRUM, a witness of competent age, produced on behalf of the Defendants, the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY MR. HONEYMAN:

Q. Mr. McCrum, state your residence and occupation, please?

Mr. GROSVENOR: Now, before you answer, Mr. McCrum, there are certain things I want to say to you. As counsel for the Government I desire to remind you that you are a defendant in this proceeding, which is a suit in equity, brought by the United States to restrain the continuance of an alleged combination and conspiracy in restraint of interstate and foreign trade and commerce in sanitary enameled iron ware, and to prevent and restrain an attempt to monopolize such trade and commerce, such a suit being authorized by section 4 of the Sherman anti-trust act. I also advise you that the Sherman Act declares unlawful such combinations, conspiracies and attempts to monopolize and monopolies, and declares what the punishment shall be upon a conviction of a violation of its provisions. This punishment in a criminal case may be a fine or imprisonment, or both, in the discretion of the court.

I also remind you that you are also a defendant in certain criminal proceedings instituted by the grand jury of the eastern district of Michigan. Two indictments, containing 6 and 4 counts respectively, were returned by that body at Detroit, Michigan, December 7, 1910, or about that time, charging that you and certain other defendants, some being corporations and some individuals, have engaged in a combination and conspiracy, to restrain interstate trade and commerce in sanitary enameled iron ware, and have attempted to monopolize that trade. If you are convicted at the trial had on those indictments, which have been brought under sections one and two of the Sherman Act, you are liable to punishment by fine or imprisonment or both in the discretion of the court.

Under these circumstances, I desire to notify you that the matters, transactions and things respecting

which evidence has been introduced and testimony given in this equity suit, both by the witnesses of the Government in support, and by the witnesses of the defendants in disproof, of the allegations of the bill of complaint are many of the matters, transactions and things respecting which evidence will be given at the trial of the criminal suit at Detroit. That is to say, many of the matters and transactions which have been and are being inquired into in this suit may and probably will be the subject of inquiry and be proven in the Detroit case. It necessarily follows that any testimony that you may give, which is relevant and material here, may and probably will be relevant and material there. Furthermore, as you are a defendant in each case, the testimony which you give here may and probably will tend to incriminate you and may be used against you in the criminal case, or it may lead to the discovery of other evidence which may be used against you in that suit.

On account of the facts just stated, I feel it is my duty, as counsel for the Government, to warn and caution you, and to advise you that the 5th amendment of the Constitution of the United States protects you from being a witness against yourself in the situation in which you find yourself. You may accordingly refuse to answer any and all questions which may be addressed to you in relation to these matters by any of the counsel for the defendants, or your own counsel.

If, however, you decide to testify here, under the expectation and belief that you will receive immunity thereby from any prosecution in respect to the matters which are in litigation in this suit, and more particularly that you will gain immunity from any punishment in the criminal case at Detroit, I distinctly advise you that testimony given by you under such circumstances will not give you immunity. You have not been and are not now called by the Government, and therefore, as counsel for the Government, I warn and caution you that any testimony which you may give will be given at your own risk.

Furthermore, if you have been called as a witness for one or more of the other defendants, and not on your own behalf,—and I understand you are now

called as a witness for the Colwell Lead Company—I advise you that the principles I have stated equally apply. Relying on the protection of the 5th Amendment you may refuse to answer every question upon these matters, whether addressed to you by your own counsel, or by the counsel of any of the other defendants. If any counsel for any of the defendants—such as Mr. Honeyman counsel for the Colwell Lead Company—on your refusal to answer, insists that you answer, I advise you that if you desire to avail yourself of your constitutional privilege to refuse to answer, and if you intend to rely upon your right not to incriminate yourself, you must still refuse to answer, and thus you must compel the counsel so insisting, to bring the matter before the court or judge for hearing. This suit was instituted at Baltimore. Not until a United States judge orders you to answer are you obliged to answer.

In conclusion, I advise you that if you do answer now, you will waive your constitutional privilege and will gain no immunity thereby in the proceedings to which I have referred. You will also subject yourself to cross examination by counsel for the Government at the close of the direct examination, if he should decide to cross examine you.

It has seemed to me only fair to the United States and to you that the position of the Government should be clearly defined and stated to you before you decide to answer any questions in this case. Do you understand what I have tried to make clear to you?

THE WITNESS: Well, will I be allowed to confer with my personal counsel regarding it? I think I understand it.

Mr. GROSVENOR: Your personal counsel of record in this case is Mr. Noble. Do you wish to consult other counsel?

Mr. HILLARY C. MESSIMER: I wish to note my appearance for the McCrum-Howell Company, Mr. McCrum and Mr. Gates.

The witness then conferred with counsel.

THE WITNESS: I think I understand it, now.

Mr. NOBLE: Note that the answer of the witness is given in reply to the Government's question.

Mr. HONEYMAN: I desire to object on the record 1
most strenuously to counsel for the Government, either directly or indirectly coercing or threatening or seeking to influence a witness duly subpœnaed by the Colwell Lead Company in a proper effort to establish its non-participation in the alleged acts of conspiracy set forth in the Bill of Complaint in this case and seeking to establish the falsity of the allegations of the Bill of Complaint, so far as this defendant, the Colwell Lead Company, is concerned. On behalf of the Colwell Lead Company, I aver the impropriety of the Government's seeking to interfere with the rights 2
of a defendant to establish its case by advising a witness not to answer. It is not the proper function of the Government to advise witnesses called in behalf of the Defendants.

Mr. GROSVENOR: Counsel for the Government states that he advises the witness neither way. I think that counsel for the Colwell Lead Company will so observe if he reads my statement.

Mr. HONEYMAN: Counsel for the Government did advise the witness to refuse to answer.

Mr. GROSVENOR: No, the only purpose of my state- 3
ment was to advise the witness of the position that the Government takes in this matter. I want him to fully understand the position of the Government and our attitude in this case. After he understands it, he is at liberty to answer or not, as he sees fit. I thought it was proper to state to him an interpretation of the law, that is, our interpretation of what we consider the law to be, and the witness is now at liberty to answer the questions if he so desires to do, but I want him to remember that my remarks were not in the nature of advice at all. 4

Mr. HONEYMAN: The Government may think it proper, so far as the Government and the witness is concerned, but so far as the defendant, the Colwell Lead Company is concerned, it is grossly improper to advise or instruct the witnesses not to answer or in the way to answer, which would be satisfactory to the Government. It partakes of coercion and undue influence on the part of the Government in interfering with the trial of the case by the defendant.

Mr. GROSVENOR: I simply endeavored to tell the witness how we interpret the law in case he should decide to answer the question.

BY Mr. HONEYMAN:

Q. Will you state your residence and occupation?

A. New York City is my residence. I am President of the McCrum-Howell Company.

Q. What is the business of the McCrum-Howell Company?

A. Boilers, radiators, cleaning machines and sanitary enameled iron ware.

Q. Where is your factory? A. We have five factories.

Q. Are you engaged in the jobbing of plumbing supplies?

A. No, sir; we sell to the jobbers.

Q. You do not sell to the plumbers, do you? A. No, sir.

Q. Do you know the Colwell Lead Company?

A. Yes, sir.

Q. What is their business?

A. Manufacturers of sanitary enameled iron ware.

Q. Do you know whether they sell direct to the plumbers?

A. They do sell direct to the plumbers.

Q. Do you know whether or not they sell to jobbers?

A. My understanding is that they do not.

Q. Do they buy sanitary enameled iron ware from the McCrum-Howell Company? A. Occasionally.

Q. Haven't they frequently bought from your Company during the last two or three years?

A. Our Mr. Gates could answer that better. He keeps in closer touch than I do with that, and he is here.

Q. Do you know whether or not they have bought in the past? A. Yes, sir; they have.

Q. You are one of the defendants under this Bill of Equity filed by the United States versus the Standard Sanitary Manufacturing Company and others? A. Yes, sir.

Q. And your Company, the McCrum-Howell Company, is a defendant? A. Yes, sir.

Q. And, as stated by the counsel for the Government, you are a defendant in the Indictment in Detroit? A. Yes, sir.

Q. You are subpœnaed to appear here this morning?

A. Yes, sir.

Q. By whom?

A. A United States Marshal subpœnaed me at my office.

Q. In behalf of the Colwell Lead Company? A. Yes, sir.

Q. Does your Company ever come in competition with the Colwell Lead Company in making sales to jobbers? 1

A. Not that I know of.

Q. If it did, would you know of it?

A. Yes, sir; there might be instances that I would not know of, but as a general proposition I would know of it.

Q. You do not know of any instance where they have come in competition with you in sales to the jobbers, do you?

A. No, sir.

Q. Prior to the filing of this Bill in Equity, had you ever talked to the Colwell Lead Company or any of its officers or representatives with reference to the Arrott patent? 2

A. No, sir.

Q. Have you met Dr. Duryea or Mr. Tilden?

A. I have met Dr. Duryea, but I don't know Mr. Tilden.

Q. Have you ever talked with anyone connected with the Colwell Lead Company with reference to the Arrott patent?

A. No, sir.

Q. Were you present at a meeting of certain manufacturers of sanitary enameled iron ware at Chicago, on or about March 2, 1910? A. Yes, sir.

Q. Was Mr. Wayman present at that meeting?

A. Yes, sir. 3

Q. Was anyone present at that time representing the Colwell Lead Company, as far as you know? A. No, sir.

Q. Was Dr. Duryea present? A. No, sir.

Q. And Mr. Tilden was not present, as far as you know?

A. No, sir.

Q. Did you at that meeting discuss with anyone the possibility of getting together under a license agreement under the Arrott patent?

Mr. GROSVENOR: I particularly object, because the witness has testified that the Colwell Lead Company was not represented at that meeting, and I cannot see why counsel should persist in asking what was done at that meeting, the record showing that was one of the unlawful meetings which resulted in this license arrangement which was the basis of this suit. 4

Mr. NOBLE: Counsel objects to the characterization of the meeting in Chicago as an "unlawful" meeting.

Mr. GROSVENOR: Strike out the word "unlawful."

Mr. MESSIMER: Counsel for the McCrum-Howell

1 Company and the witness instructs the witness that in view of the statement made by counsel for the Government in the commencement of his testimony, he may, if his answer to this question would tend to incriminate him, decline to answer the same until the matter has been passed upon by the court.

THE WITNESS: I decline to answer on the advice of counsel and on the further ground that it would tend to incriminate me, until the question has been passed upon by the Court.

BY Mr. HONEYMAN:

2 Q. Do you decline to answer on the advice of your personal counsel, or on the advice of counsel for the Government? A. On the advice of my personal counsel.

Q. Was there any discussion at that meeting with reference to the Colwell Lead Company joining the other manufacturers in an arrangement to take uniform licenses under the Arrott or any other patent?

Mr. MESSIMER: Counsel for the McCrum-Howell Company and for the witness gives the witness the same instructions.

3 THE WITNESS: I decline to answer for the same reasons I have stated.

Mr. GROSVENOR: Counsel for the Government objects to the question as being immaterial and irrelevant and not competent as to the Colwell Lead Company. What these others were going to do in respect to the Colwell Lead Company, the Colwell Lead Company not being represented at the meeting, as testified to by the witness, is immaterial and irrelevant.

BY Mr. HONEYMAN:

4 Q. Was it stated by Mr. Wayman at that meeting that he had any understanding or arangement with the Colwell Lead Company with respect to any licenses under the Arrott or other patents?

Mr. GROSVENOR: I object to that question also as being incompetent, immaterial and irrelevant and not binding upon the Colwell Lead Company in any event, whatever Wayman may have said as to his intentions at that time.

THE WITNESS: Am I to answer that? 1

Mr. MESSIMER: Yes.

THE WITNESS: Will you read the question, I have forgotten it.

Mr. GROSVENOR: I do not want to advise the witness too much about his rights, but you do not have to rely on your own counsel. In this question of incrimination, the witness does as he pleases.

THE WITNESS: I hardly know where to get my advice.

Mr. GROSVENOR: You do not have to wait for counsel or anybody else to advise you. 2

Mr. HONEYMAN: Counsel for the Colwell Lead Company objects very strenuously to the counsel for the United States Government interfering with the defendant's witnesses and the conduct of the defendant's case. This is none of the business of the counsel for the Government.

Mr. MESSIMER: Counsel for the McCrum-Howell Company and for the witness suggests that he will protect the witness and that the Government need not feel called upon to do anything in addition.

THE WITNESS: I would like to have the question re- 3
peated.

The stenographer then read the last question.

A. It was not.

BY Mr. HONEYMAN:

Q. Counsel for the Colwell Lead Company gives notice that he will take steps to compel the witness to answer the questions which he has declined to answer. I insist upon that.

Mr. GROSVENOR: Of course, that will have to be done this week. The time for the taking of testimony 4
expires this week.

Mr. MESSIMER: Counsel for the McCrum-Howell Company suggests that the record be immediately certified to the Court in order that this question may be immediately passed upon. It is possible that an arrangement can be made with some one of the Federal judges here in the building to determine this question. Counsel objects to detaining this witness under subpœna for any indefinite period while this matter is

1 brought up in some other circuit or district than the one in which the witness has been subpœnaed.

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR THE WITNESS.

BY Mr. NOBLE:

Q. Mr. McCrum, the counsel for the Government has spoken of the suit which is pending in the Circuit Court for the District of Maryland, and also the indictments pending in Detroit, found by the Grand Jury there, about December 7, 1910. I ask you if the matters and things complained of as being illegal in that civil suit and also in the indictments
2 referred to, are substantially the same matters and things?

A. Yes, sir; they are.

Q. Did you make answer to the civil suit pending in Baltimore pursuant to a subpœna issued in that case?

Mr. GROSVENOR: I object to the question unless it means the answer that was filed in response to the bill of complaint and the subpœna in chancery served upon the witness after the filing of the bill of complaint.

Mr. NOBLE: I will make that clear. Just answer that question.

A. I really do not feel competent to answer it. I have
3 seen so many papers in this case, you know.

Q. Did you make a verified answer in this case?

A. Yes, sir.

Q. That was made in response to the petition filed in Baltimore? A. Yes, sir.

Q. And you did that in response to the subpœna or process served on you in that case? A. Yes, sir.

Q. What was the date upon which you swore to the Answer in the suit in Baltimore?

A. The thirtieth day of September, 1910.

Q. That was the answer you before referred to as being
4 the verified answer filed by you in response to the petition of the Government in Baltimore? A. Yes, sir.

Mr. NOBLE: I am finished now with this witness, but I may call this witness at some other time in reference to his own case.

No Cross Examination.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

HOWARD T. GATES, a witness of competent age, produced on behalf of the defendant, the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows: 1

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Gates, state where you reside and your occupation, please?

Mr. GROSVENOR: Before you answer that, Mr. Gates, I want to state certain things to you.

Mr. MESSIMER: Couldn't you ask him if he heard you read it to the other witnesses? 2

Mr. GROSVENOR: No, I do not want there to be any question about the witness understanding just what the Government regards as the law. This is not given in the way of advising you, Mr. Gates, as to what you shall do as to answering the questions, but I wish to state the Government's interpretation of the law in order that there may not be any possibility hereafter of its being stated that the witness did not understand the position of the Government.

Mr. HONEYMAN: Counsel for the Colwell Lead Company objects to the counsel advising the witness in such a way as he did the last witness and in such a way as to keep him from answering proper questions put to him by the Colwell Lead Company. It is unfair for the Government to prevent the defendant from establishing its defense in this suit which was brought by the Government. 3

Mr. GROSVENOR: Mr. Gates, as counsel for the Government, I desire to remind you that you are a defendant in this proceeding, which is a suit in equity, brought by the United States to restrain the continuance of an alleged combination and conspiracy in restraint of interstate and foreign trade and commerce in sanitary enameled iron ware, and to prevent and restrain an attempt to monopolize such trade and commerce, such a suit being authorized by section 4 of the Sherman anti-trust act. I also advise you that the Sherman Act declares unlawful such combinations, conspiracies and attempts to monopolize and monopolies, and declares what the punishment shall 4

be upon a conviction of a violation of its provsions. This punishment in a criminal case may be a fine or imprisonment or both, in the discretion of the court.

I also remind you that you are also a defendant in certain criminal proceedings instituted by the grand jury of the eastern district of Michigan. Two indictments, containing 6 and 4 counts respectively, were returned by that body at Detroit, Michigan, December 7, 1910, or about that time, charging that you and certain other defendants, some being corporations and some individuals, have engaged in a combination and conspiracy to restrain interstate trade and commerce in sanitary enameled iron ware, and have attempted to monopolize that trade. If you are convicted at the trial had on those indictments, which have been brought under sections one and two of the Sherman Act, you are liable to punishment by fine or imprisonment or both, in the discretion of the Court.

Under these circumstances, I desire to notify you that the matters, transactions and things respecting which evidence has been introduced and testimony given in this equity suit, both by the witnesses of the Government in support, and by the witnesses of the Defendants in disproof, of the allegations of the Bill of Complaint are many of the matters, transactions and things respecting which evidence will be given at the trial of the criminal suit at Detroit. That is to say, many of the matters and transactions which have been and are being inquired into in this suit may and probably will be the subject of inquiry and be proven in the Detroit case. It necessarily follows that any testimony that you may give, which is relevant and material here, may and probably will be relevant and material there. Furthermore, as you are a defendant in each case, the testimony which you give here may and probably will tend to incriminate you and may be used against you in the criminal case, or it may lead to the discovery of other evidence which may be used against you in that suit.

On account of the facts just stated, I feel it is my duty, as counsel for the Government, to warn and caution you, and to advise you that the 5th amendment of the Constitution of the United States protects

you from being a witness against yourself in the situation in which you find yourself. You may accordingly refuse to answer any and all questions which may be addressed to you in relation to these matters by any of the counsel for the defendants, or your own counsel. 1

If, however, you decide to testify here, under the expectation and belief that you will receive immunity thereby from any prosecution in respect to the matters which are in litigation in this suit, and more particularly that you will gain immunity from any punishment in the criminal case at Detroit, I distinctly advise you that testimony given by you under such circumstances will not give you immunity. You have not been and are not now called by the Government and therefore, as counsel for the Government, I warn and caution you that any testimony which you may give will be given at your own risk. 2

Furthermore, if you have been called as a witness for one or more of the other defendants, and not on your own behalf—and I understand you are now called as a witness for the Colwell Lead Company—I advise you that the principles I have stated equally apply. Relying on the protection of the 5th Amendment, you may refuse to answer every question upon these matters, whether addressed to you by your own counsel, or by the counsel of any of the other defendants. If any counsel for any of the defendants—such as Mr. Honeyman, counsel for the Colwell Lead Company—on your refusal to answer, insists that you answer, I advise you that if you desire to avail yourself of your constitutional privilege to refuse to answer, and if you intend to rely upon your right not to incriminate yourself, you must still refuse to answer, and thus must compel the counsel, so insisting, to bring the matter before the court or judge for hearing. This suit was instituted at Baltimore. Not until a United States judge orders you to answer are you obliged to answer. 3 4

In conclusion, I advise you that if you do answer now, you will waive your constitutional privilege and will gain no immunity thereby in the proceedings to which I have referred. You will also subject yourself

to cross examination by counsel for the Government at the close of the direct examination, if he should decide to cross examine you.

It has seemed to me only fair to the United States and to you that the position of the Government should be clearly defined and stated to you before you decide to answer any questions in this case. Do you understand what I have tried to make clear to you?

THE WITNESS: I do.

Mr. NOBLE: Note that that question is asked by the Government.

Mr. HONEYMAN: Counsel for the Colwell Lead Company desires to note the same objection to this statement of counsel for the Government as was noted to a similar statement made by counsel for the Government when counsel for the Colwell Lead Company attempted to interrogate the witness, Mr. McCrum. Counsel considers the action of counsel for the Government as being improper and as attempting to interfere with the defendant in establishing its case.

BY Mr. HONEYMAN:

Q. Will you state your residence and occupation?

A. Pleasantville, New York, Secretary of the McCrum-Howell Company.

Q. The McCrum-Howell Company and yourself are defendants in this equity suit brought in Maryland by the United States Government against the Standard Sanitary Manufacturing Company and other defendants? A. Yes, sir.

Q. And as stated by counsel for the Government, you and your Company are also defendants in the criminal proceedings in Detroit? A. Yes, sir.

Q. What is the business of your Company, please?

A. Manufacturers of boilers, radiators, sanitary enameled ware and vacuum cleaning machines.

Q. Do you sell to the plumbers direct? A. No, sir.

Q. Do you know the Colwell Lead Company? A. Yes, sir.

Q. How long have you known them in a business way?

A. About eight years.

Q. Are you acquainted personally with Dr. Duryea?

A. Yes, sir.

Q. And with Mr. Tilden? A. No, sir.

Q. Dr. Duryea is President of the Colwell Lead Company?

A. Yes, sir. 1

Q. Are they competitors of yours in sanitary enameled iron ware?

A. I should say no. They sell to a different class of trade.

Q. What is their trade?

A. They sell direct to the plumbers. We sell to the jobbers.

Q. Does the Colwell Lead Company, to your knowledge, sell generally throughout the United States to jobbers of plumbing supplies? A. They do not.

Q. Is it not a fact that their business is a local business in New York City to the plumbers? 2

A. I should say their principal business is.

Q. Were you present at a certain meeting of the representatives of certain manufacturers of enameled iron ware held at the Hotel Astor, in New York City, on or about the thirtieth of March, 1910? A. I was.

Q. Was Mr. Wayman present at that meeting?

A. He was.

Q. Was Dr. Duryea present at that meeting?

A. I don't think he was.

Q. Was there any representative of the Colwell Lead Company present at that meeting, so far as you know? 3

A. Not to my knowledge.

Q. Were you present at any meetings of the representatives of enameled iron ware manufacturers held at Mt. Clemens, Michigan, during the month of April, 1910?

Mr. MESSIMER: Counsel for the McCrum-Howell Company and for the witness, instructs the witness that in view of the statement made by counsel for the Government, if his answer to this question would tend to incriminate him, he may decline to answer it until the matter has been passed upon by the court. 4

THE WITNESS: Acting upon the advice of my counsel, and on the ground that my answer might tend to incriminate me, I decline to answer until the matter has been passed upon by the court.

BY Mr. HONEYMAN:

Q. Was the Arrott or any other patent used in the manufacture of enameled iron ware discussed at any of those meetings at Mt. Clemens?

1 Mr. MESSIMER: Counsel for the McCrum-Howell Company and for the witness gives the witness the same advice.

THE WITNESS: I make the same answer.

Mr. GROSVENOR: And counsel for Government objects on the ground that he does not see how this question is in any way relevant to the case of the Colwell Lead Company.

Mr. HONEYMAN: Counsel for the Colwell Lead Company thinks that counsel for the Government is assuming that there was a conspiracy entered into at
2 these meetings. Counsel for the Colwell Lead Company thinks that there was no conspiracy or arrangement entered into at any of those meetings and he thinks he can show that fact in denial of the allegations in the Bill of Complaint. Naturally, if there was no conspiracy, then it could not be extended to or adopted afterward by the Colwell Lead Company.

Q. At any of those meetings, was there any proposition considered or discussed between manufacturers for taking uniform licenses under the Arrott or any other patent?

3 Mr. MESSIMER: I give the same advice to the witness.

THE WITNESS: I make the same answer.

Q. Were you present at any time at any meeting at Mt. Clemens, during the month of April, 1910, where Dr. Duryea or any representative of the Colwell Lead Company was present?

Mr. MESSIMER: Same instruction and advice to the witness.

THE WITNESS: Same answer.

Mr. HONEYMAN: Counsel for the Colwell Lead Company gives notice that he will take steps to compel the
4 witness to answer these questions, as he considers them essential in the conduct of his case, and reserving that right, he is finished with the witness at present.

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR THE WITNESS:

BY Mr. NOBLE:

Q. Are you here under a subpœna? A. I am.

Q. At whose request was that subpœna served on you?

A. The Colwell Lead Company.

Q. Counsel for the Government in his statement has called attention to the fact that there was a bill pending against you and other defendants in the Circuit Court of the United States for the District of Maryland, and that there were certain indictments found on or about the 7th of December, 1910, at Detroit, against you and other defendants, substantially the same in both cases. I ask if the matters, transactions and things complained of in the suit in Baltimore, in which the Government filed the petition referred to, and the indictments found in Detroit, just mentioned, are substantially the same? A. Yes. 1

Q. And you are a defendant to the suit in Baltimore and also to the indictments in Detroit just mentioned? 2

A. Yes, sir.

Q. Did you make an answer to the petition filed in Baltimore in the Circuit Court for the District of Maryland?

A. Yes, sir.

Q. Was your answer filed in that case? A. Yes, sir.

Q. Was that a verified answer? A. Yes, sir.

Q. Will you please state what date you made the verification to that answer?

A. The thirtieth day of September, 1910.

Q. Did you make that answer pursuant to a subpœna served upon you in that suit by the Circuit Court for the District of Maryland? A. Yes, sir. 3

Mr. NOBLE: That is all. I may call this witness later in his own defense.

No Cross Examination.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Mr. HONEYMAN: I shall have some more witnesses here at two o'clock. In the meantime, I desire to find out if I can have these questions certified to court here. 4

At this point a recess was taken until 2 o'clock.

After Recess.

FRANCIS J. TORRANCE, a witness of competent age, produced on behalf of the Defendant, the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Torrance, you are subpœnaed as a witness on behalf of the Colwell Lead Company?

Mr. GROSVENOR: Before you answer any questions, Mr. Torrance, there are certain things which I wish to say to you.

Mr. HONEYMAN: Counsel for the Colwell Lead Company objects to counsel for the Government pursuing the policy which he adopted at the morning session, in reference to instructing witnesses subpœnaed by the Colwell Lead Company. The action of the Government virtually threatening and intimidating witnesses of the Colwell Lead Company is grossly improper and uncalled for. The witnesses are protected by their own counsel and do not need the protection of counsel for the Government. We think it is unjust, unfair and wrong for counsel for the Government to interfere with our defense.

Mr. GROSVENOR: My remarks are addressed to the witness merely for the purpose of explaining to him the position of the Government in this matter, and not in any way to instruct him what he should do, but simply to explain our position.

Mr. Torrance, as counsel for the Government, I desire to remind you that you are a defendant in this proceeding, which is a suit in equity, brought by the United States to restrain the continuance of an alleged combination and conspiracy in restraint of interstate and foreign trade and commerce in sanitary enameled iron ware, and to prevent and restrain an attempt to monopolize such trade and commerce, such a suit being authorized by Section 4 of the Sherman Anti-Trust Act. I also advise you that the Sherman Act declares unlawful such combinations, conspiracies and attempts to monopolize and monopolies, and declares what the punishment shall be upon a conviction of a violation

of its provision. This punishment in a criminal case 1
may be a fine or imprisonment, or both, in the discretion of the court.

I also remind you that you are also a defendant in certain criminal proceedings instituted by the grand jury of the Eastern District of Michigan. Two indictments, containing 6 and 4 counts respectively, were returned by that body, at Detroit, Michigan, December 7, 1910, or about that date, charging that you and certain other defendants, some being corporations and some individuals, have engaged in a combination and conspiracy to restrain interstate trade and commerce in sanitary 2
enameled iron ware, and have attempted to monopolize that trade. If you are convicted at the trial had on those indictments, which have been brought under Sections One and Two of the Sherman Act, you are liable to punishment by fine or imprisonment, or both, in the discretion of the court.

Under these circumstances, I desire to notify you that the matters, transactions and things respecting which evidence has been introduced and testimony given in this equity suit, both by the witnesses of the Government in support, and by the witnesses of the 3
defendants in disproof, of the allegations of the bill of complaint are many of the matters, transactions and things respecting which evidence will be given at the trial of the criminal suit at Detroit. That is to say, many of the matters and transactions which have been and are being inquired into in this suit may and probably will be the subject of inquiry and be proven in the Detroit case. It necessarily follows that any testimony that you may give, which is relevant and material here, may and probably will be relevant and material there. Furthermore, as you are a defendant in 4
each case, the testimony which you give here may and probably will tend to incriminate you and may be used against you in the criminal case, or it may lead to the discovery of other evidence which may be used against you in that suit.

On account of the facts just stated, I feel it is my duty, as counsel for the Government, to warn and caution you, and to advise you that the 5th amendment of the Constitution of the United States protects you

from being a witness against yourself in the situation in which you find yourself. You may accordingly refuse to answer any and all questions which may be addressed to you in relation to these matters by any of the counsel for the defendants, or your own counsel.

If however, you decide to testify here, under the expectation and belief that you will receive immunity thereby from any prosecution in respect to the matters which are in litigation in this suit, and more particularly that you will gain immunity from any punishment in the criminal case at Detroit, I distinctly advise you that testimony given by you under such circumstances will not give you immunity. You have not been and are not now called by the Government, and therefore, as counsel for the Government, I warn and caution you that any testimony which you may give will be given at your own risk.

Furthermore, if you have been called as a witness for one or more of the other defendants, and not on your own behalf,—and I understand you are now called as a witness for the Colwell Lead Company—I advise you that the principles I have stated equally apply. Relying on the protection of the 5th Amendment, you may refuse to answer every question upon these matters, whether addressed to you by your own counsel or by the counsel of any of the other defendants. If any counsel for any of the defendants—such as Mr. Honeyman, counsel for the Colwell Lead Company—on your refusal to answer, insists, that you answer, I advise you that if you desire to avail yourself of your constitutional privilege and refuse to answer, and if you intend to rely upon your right not to incriminate yourself, you must still refuse to answer, and thus you must compel the counsel, so insisting, to bring the matter before the court or judge for hearing. This suit was instituted at Baltimore. Not until a United States judge orders you to answer are you obliged to answer.

In conclusion, I advise you that if you do answer now, you will waive your constitutional privilege and will gain no immunity thereby in the proceedings to which I have referred. You will also subject yourself to cross examination by counsel for the Govern-

ment at the close of the direct examination, if he should decide to cross examine you. 1

It has seemed to me only fair to the United States and to you that the position of the Government should be clearly defined and stated to you before you decided to answer any questions in this case. Do you understand what I have tried to make clear to you?

THE WITNESS: I do.

Mr. NOBLE: Please note that that question was responded to at the request of the Government.

Mr. HONEYMAN: Counsel for the Colwell Lead Company desires to give notice to counsel for the Government that he is interfering with the orderly conduct of the Colwell Lead Company, in proving its defense, and is delaying and interfering seriously with the defense of the Colwell Lead Company. The attitude which the Government has taken makes it necessary for counsel for the Colwell Lead Company to apply to the court for relief and also for an extension of time in which the Colwell Lead Company may conclude its case. I also wish to state that counsel for the Government, in stating his position to the witness, excludes from his mind any fairness toward counsel for the Colwell Lead Company, who is now seeking to establish its defense. 2 3

BY Mr. HONEYMAN:

Q. Now, Mr. Torrance, you were subpœnaed to appear here in behalf of the Colwell Lead Company, one of the defendants in this proceeding? A. I was.

Q. What is your residence and business, please?

A. Pittsburg.

Q. And your business?

A. Vice-President of the Standard Sanitary Manufacturing Company. 4

Q. The Standard Sanitary Manufacturing Company and yourself are defendants in this suit in equity brought in the United States Circuit Court for the District of Maryland by the United States of America against the Standard Sanitary Manufacturing Company and others? A. Yes.

Q. You and your Company are also defendants in certain criminal proceedings brought by the United States of America in Detroit, Michigan? A. Yes, sir.

Q. How long have you been Vice-President of the Standard Sanitary Manufacturing Company? A. Eleven years.

Q. What is the business of your Company?

A. Manufacturers of sanitary enameled ware.

Q. Do you know the Colwell Lead Company?

A. Yes, sir.

Q. How long have you known of that concern?

A. Twenty years.

Q. Do you know their business? A. Yes, sir.

Q. What is it? A. Plumbing sanitary goods.

Q. Plumbing and sanitary goods?

A. Plumbing and sanitary goods; that is the common term of the business.

Q. Are they jobbers, do they sell to the plumbers?

A. They do.

Q. Do you know whether or not they sell to jobbers?

A. That I don't know.

Q. Haven't you any general knowledge on that subject?

A. They buy from us; they are customers of ours.

Q. Do you know as a matter of general knowledge whether or not they sell to jobbers?

Mr. GROSVENOR: The witness has testified in response to the first question as to that.

Mr. HONEYMAN: The witness is asked now whether or not he knows, as a matter of general knowledge in the trade, whether or not the Colwell Lead Company sells to plumbers or jobbers?

A. I know they sell to plumbers; I don't know of their sales to jobbers.

Q. You say they are customers of yours? A. Yes, sir.

Q. Do they compete with you in the sale of sanitary enameled iron ware? A. No, sir; not that I know of.

Q. You would be liable to know it if they did, wouldn't you? A. Yes, sir.

Q. Where is the business of the Colwell Lead Company?

A. New York City.

Q. Do you know whether or not they sell generally throughout the United States, sanitary enameled iron ware?

A. I do not.

Q. Do you think you would know it if they did?

A. Well, my knowledge of the trade generally is pretty good. I have not run across them as competitors.

Q. Are you acquainted with Dr. Duryea? A. Yes, sir. 1

Q. And Mr. Tilden? A. Yes, sir.

Q. Dr. Duryea is President and Mr. Tilden is Secretary of the Colwell Lead Company?

A. I don't know Mr. Tilden's office. I know Dr. Duryea is President of the Company.

Q. You know that Mr. Tilden is connected with the Colwell Lead Company? A. Yes, sir.

Q. How long have you been acquainted with Dr. Duryea?

A. I think eight or ten years.

Q. Your Company was the owner of the Arrott patent in July and August, 1909? A. Yes, sir. 2

Q. Do you recall any correspondence with the Colwell Lead Company respecting the Arrott patent about July, 1909?

A. I remember the correspondence, but I don't know the details of it. I remember correspondence relative to the use of the patent.

Q. The use of the patent by the Colwell Lead Company?

A. Yes, sir.

Q. Do you know whether your Company authorized its use by the Colwell Lead Company about July, 1909?

A. The matter was in the hands of our general manager, 3 being a manufacturing question, the correspondence to the best of my knowledge was all turned over to that department.

Q. Do you know whether or not your manager authorized the Colwell Lead Company to use the Arrott patent about July, 1909?

A. I could not testify of my own knowledge or acquaintance with the subject.

Q. But you do know of your own knowledge that there was some correspondence of that kind?

A. Yes, considerable.

Q. Do you know whether or not the Colwell Lead Com- 4 pany did install the Arrott device in the summer of 1909?

A. I am not positive, but my recollection is that they did.

Q. You were subpœnaed to produce that correspondence, were you not, Mr. Torrance? A. I was, yes, sir.

Q. Have you produced it?

A. I was served with the subpœna by the marshal here in the City, and of course I did not have the correspondence here.

Q. Were you present Mr. Torrance, at any meetings of

manufacturers of sanitary enameled iron ware, at Mt. Clemens, Michigan, in the spring of 1910?

THE WITNESS: I decline to answer that question in view of the statement made by Mr. Grosvenor, the Government's counsel.

Q. Is that the reason for your declination, the statement made by counsel for the Government?

A. Yes, that and the fact that I did furnish testimony in this case and was indicted. I was under the impression that if I furnished the evidence in the equity suit that I would not be subject to any further penalty or annoyance in the matter.

Q. When did you furnish evidence in the equity suit?

A. I filed an answer in response to a subpœna of the Government either in July or August of the past year. It was September 30, I filed my answer. I thought it was in August.

Q. Was it 1910?

A. Yes, sir; September 30, 1910.

Q. You considered that giving evidence, the filing of a verified answer?

Mr. GROSVENOR: I object to that as an opinion of law. It has been decided by the court that it is not. The question is, therefore, clearly incompetent and irrelevant.

Mr. HONEYMAN: I insist on an answer to the question.

THE WITNESS: I was told at the time I filed the answer—

Q. You were told what?

Mr. GROSVENOR: I object to that as hearsay. It does not indicate who said it, and besides it is immaterial and is hearsay. What his counsel may have said is absolutely immaterial, of course.

BY Mr. HONEYMAN:

Q. You were told what, and by whom, Mr. Torrance?

A. I was told by counsel in the case that I should file the answer and I was required to file it.

Q. That is one of the reasons why you decline to answer my question? A. Yes, sir.

Q. Did you at any time discuss with Dr. Duryea or any

representative of the Colwell Lead Company any matters relating to the Arrott patent, excluding from your answer what you have already testified to about some correspondence between your Company and the Colwell Lead Company in July, 1909? 1

Mr. NOBLE: Will you read that over again?

(The stenographer then read the last question.)

THE WITNESS: I decline to answer that question in view of the statement of Government's counsel.

Q. Do you know whether or not Dr. Duryea was present at any meeting of the manufacturers of enameled iron ware in the spring of 1910, at which you were present? 2

THE WITNESS: I decline to answer that also.

Q. You decline to answer these questions for the same reason that you have heretofore given? A. In each instance.

Q. Did you ever have any conversation with Dr. Duryea on the subject of uniform licenses from Wayman for the Arrott or any other patents concerned in the manufacture of enameled iron ware?

THE WITNESS: I decline to answer that also.

Mr. HONEYMAN: In view of the witness' refusal to answer questions which are material to the defense of the Colwell Lead Company, counsel now gives notice that he will make application to the court to compel the witness to answer; also that he will be obliged to make an application for extension of time until after the witness can be compelled to answer these questions, the interference now being on the part of the Government. Counsel declines to continue the examination of this witness further until he can take proper steps to compel the answers. 3

4

QUESTIONS BY Mr. NOBLE, OF COUNSEL FOR THE WITNESS.

BY Mr. NOBLE:

Q. Mr. Torrance, are you and your Company defendants in the civil suit filed in the Circuit Court of the United States for the District of Maryland? A. Yes, sir.

Q. Are you also defendants in the indictment filed in Detroit, filed about December 7, 1910? Yes, sir.

Q. Are the matters, transactions and things alleged to be

unlawful in the petition, and likewise alleged to be unlawful in the indictments, substantially the same? A. I believe so.

Q. The answer you verified on the thirtieth day of September, 1910, was thereafter filed as your answer in the suit in Baltimore? A. Yes, sir.

Mr. NOBLE: I may call this witness again in his own defense and in defense of the rights of his Company, but that is all for the present.

No Cross Examination.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

THEODORE AHRENS, a witness of competent age, produced on behalf of the Defendant, the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Ahrens, will you state your residence and occupation?

Mr. GROSVENOR: Mr. Ahrens, there are certain things that I wish to say to you before you answer any questions.

As counsel for the Government, I desire to remind you that you are a defendant in this proceeding, which is a suit in equity, brought by the United States to restrain the continuance of an alleged combination and conspiracy in restraint of interstate and foreign trade and commerce in sanitary enameled iron ware, and to prevent and restrain an attempt to monopolize such trade and commerce, such a suit being authorized by Section 4 of the Sherman Anti-Trust Act. I also advise you that the Sherman Act declares unlawful such combinations, conspiracies and attempts to monopolize and monopolies, and declares what the punishment shall be upon a conviction of a violation of its provisions. This punishment in a criminal case may be a fine or imprisonment, or both, in the discretion of the court.

I also remind you that you are also a defendant in certain criminal proceedings instituted by the grand

jury of the Eastern District of Michigan. Two indictments, containing 6 and 4 counts respectively, were returned by that body at Detroit, Michigan, December 7, 1910, or about that time, charging that you and certain other defendants, some being corporations and some individuals, have engaged in a combination and conspiracy to restrain interstate trade and commerce in sanitary enameled iron ware, and have attempted to monopolize that trade. If you are convicted at the trial had on those indictments, which have been brought under Sections One and Two of the Sherman Act, you are liable to punishment by fine or imprisonment, or both, in the discretion of the court. 1 2

Under these circumstances, I desire to notify you that the matters, transactions and things respecting which evidence has been introduced and testimony given in this equity suit, both by the witnesses of the Government in support, and by the witnesses of the defendants in disproof, of the allegations of the bill of complaint are many of the matters, transactions and things respecting which evidence will be given at the trial of the criminal suit at Detroit. That is to say, many of the matters and transactions which have been and are being inquired into in this suit may and probably will be the subject of inquiry and be proven in the Detroit case. It necessarily follows that any testimony that you may give, which is relevant and material here, may and probably will be relevant and material there. Furthermore, as you are a defendant in each case, the testimony which you give here may and probably will tend to incriminate you and may be used against you in the criminal case, or it may lead to the discovery of other evidence which may be used against you in that suit. 3 4

On account of the facts just stated, I feel it is my duty, as counsel for the Government, to warn and caution you, and to advise you that the 5th amendment of the Constitution of the United States protects you from being a witness against yourself in the situation in which you find yourself. You may accordingly refuse to answer any and all questions which may be addressed to you in relation to these matters

by any of the counsel for the defendants or your own counsel.

If, however, you decide to testify here, under the expectation and belief that you will receive immunity thereby from any prosecution in respect to the matters which are in litigation in this suit, and more particularly that you will gain immunity from any punishment in the criminal case at Detroit, I distinctly advise you that testimony given by you under such circumstances will not give you immunity. You have not been and are not now called by the Government and therefore, as counsel for the Government, I warn and caution you that any testimony which you may give will be given at your own risk.

Furthermore, if you have been called as a witness for one or more of the other defendants, and not on your own behalf—and I understand you are now called as a witness for the Colwell Lead Company—I advise you that the principles I have stated equally apply. Relying on the protection of the 5th Amendment you may refuse to answer every question upon these matters whether addressed to you by your own counsel or by the counsel of any of the other defendants. If any counsel for any of the defendants—such as Mr. Honeyman, counsel for the Colwell Lead Company—on your refusal to answer, insists that you answer, I advise you that if you desire to avail yourself of your constitutional privilege to refuse to answer, and if you intend to rely on your rights not to incriminate yourself, you must still refuse to answer, and thus you must compel the counsel, so insisting, to bring the matter before the court or judge for hearing. This suit was instituted at Baltimore. Not until a United States judge orders you to answer are you obliged to answer.

In conclusion, I advise you that if you do answer now, you will waive your constitutional privilege and will gain no immunity thereby in the proceedings to which I have referred. You will also subject yourself to cross examination by counsel for the Government at the close of the direct examination, if he should decide to cross examine you.

It has seemed to me only fair to the United States and to you that the position of the Government should

be clearly defined and stated to you before you decide to answer any questions in this case. Do you understand what I have tried to make clear to you? 1

THE WITNESS: Yes, sir.

Mr. NOBLE: Please note that that reply is in response to a question by the Government.

Mr. HONEYMAN: Please note the objection of the Colwell Lead Company to the action of counsel for the Government in instructing and advising the defendant's witnesses to decline to answer questions put to them on behalf of the Colwell Lead Company and tending to show their defense set up in their separate Answer. 2

Mr. GROSVENOR: Counsel for the Government does not advise the witness one way or the other. I simply state the position of the Government.

Mr. HONEYMAN: Counsel not only advises the witness not to answer, but he threatens and intimidates him with imprisonment and fine, if he does not stand on his constitutional rights. It is a distinct and decided interference by the Government with the witnesses of the Colwell Lead Company and with the Colwell Lead Company in its attempt to establish its defense, and it is not proper for counsel for Government to do anything of that sort. The witness is of age and is represented by competent counsel and he does not need any assistance or advice of counsel for the Government to instruct him not to answer or to refuse to answer the questions put by the counsel for the Defendant. 3

BY Mr. HONEYMAN:

Q. Will you state your residence and business?

A. My residence is Louisville, Kentucky, and I am President of the Standard Sanitary Manufacturing Company. 4

Q. The Standard Sanitary Manufacturing Company and yourself individually are defendants in this Bill of Equity filed on behalf of the United States of America in the Circuit Court for the District of Maryland?

THE WITNESS: Might I ask before you gentlemen ask me any other questions what this particular hearing is for today? I really don't know what this is about.

Mr. HONEYMAN: If you are making your inquiry of me, Mr. Ahrens, I will state that the Colwell Lead Company is a defendant in the suit instituted by the United States of America against the Standard Sanitary Manufacturing Company and others, in the Circuit Court of the United States for the District of Maryland. In that proceeding the Colwell Lead Company has a separate and distinct Answer setting forth its particular situation with reference to the matters and things set forth in the Bill of Equity. The Colwell Lead Company are calling you as a witness to substantiate the matters set forth in its Answer.

THE WITNESS: I want to state for the benefit of counsel for the Government and for the defendants, that I have not given the case my attention up to this time, and, therefore, I am not as well acquainted with these matters as my partner, Mr. Torrance. Do I understand that the Colwell Lead Company takes a different position from the other defendants in this case?

Mr. HONEYMAN: It does, decidedly.

Mr. GROSVENOR: You are somewhat surprised, and I am too.

BY Mr. HONEYMAN:

Q. Well, the business of your Company is the manufacture and sale of enameled iron ware, as I understand it?

A. And other plumbing supplies.

Q. Do you know the Colwell Lead Company in a business way? A. Yes, sir.

Q. How long have you known them?

A. Ten or fifteen years.

Q. What is their business?

A. They are dealers in plumbing supplies.

Q. Whereabouts? A. In New York City.

Q. Do they sell to the plumbers or to the jobbers?

A. So far as I know they sell to plumbers only.

Q. If they sold to jobbers, would you know of it?

A. I should think I would, because we deal with the jobbers in the United States and we do not come in contact with them as competitors and also they deal with our Company as jobbers.

Q. Do you know Dr. Duryea? A. Yes, sir; personally.

Q. How long have you known him? 1

A. A few years; I could not state exactly.

Q. Do you know Mr. Tilden?

A. I have known Mr. Tilden for five or six years, or longer.

Q. I asked you the question, but I don't think you answered it, whether you and your Company were not defendants in this Bill of Equity brought in the District of Maryland? A. Yes, sir.

Q. You are also defendants in the criminal proceedings brought by the Government in Detroit, are you not?

A. Yes, sir. 2

Q. Do you know anything about the Colwell Lead Company procuring the license or making an arrangement with your Company in or about July, 1909, whereby the Colwell Lead Company could use the Arrott patent?

THE WITNESS: I would like to consult with my attorney on this matter.

The witness then consulted with counsel.

THE WITNESS: I know nothing of the Colwell Lead Company making an arrangement with my Company to use this patent.

3

Q. Did it not come to your knowledge as President of the Standard Sanitary Manufacturing Company that the Colwell Lead Company had applied for and received a license for the use of the Arrott patent?

A. My knowledge of that subject is this: As owners of this patent we were willing, under certain conditions, to license other manufacturers, and Mr. E. L. Dawes, the General Manager of the Company, was authorized to make such terms as he believed reasonable with other manufacturers to license them, and he may have taken this matter up with the Colwell Lead Company, but I know nothing of it. 4

Q. Where is the business of the Colwell Lead Company?

A. In New York City.

Q. Do you know whether or not they sell generally throughout the United States, that is sanitary enameled iron ware? A. I don't believe they do.

Q. If they did, you would be liable to know it, wouldn't you? A. I would be certain to know of it.

Q. You don't know of it, do you? A. No, sir.

Q. Were you present at any meetings in the spring of

1910, during the month of April, at Mt. Clemens, Michigan, where there were gathered a number of manufacturers of enameled iron ware? A. No, sir.

Q. You were not present, you say? A. No, sir.

Q. Were you present at any time at Mt. Clemens, Michigan, or in the State of Michigan, at any meeting of manufacturers of enameled iron ware? A. No, sir.

Q. Were you present at any meeting of manufacturers of enameled iron ware where any patents under any license agreements were discussed?

A. I decline to answer that question.

Q. For what reason?

A. On advice of the attorney for the Government, just given to me.

Mr. GROSVENOR: And on advice of your own counsel who was just now speaking to you.

THE WITNESS: Well, on the advice of the attorney of the Government just given to me here, and also because I am informed that giving testimony in this case might tend to incriminate me, and there is no immunity for witnesses who give testimony in this matter. I supposed we were immune, and this immuntiy plea of ours was decided against us in the United States Court in Michigan.

Q. Did you ever have any conversation with any manufacturers at any time on the subject of uniform licenses under the Arrott patent?

THE WITNESS: I decline to answer.

Q. For what reason?

A. I don't have to give any reason, do I—

Mr. GROSVENOR: Certainly.

THE WITNESS: I decline to answer.

BY Mr. HONEYMAN:

Q. You decline to give any reasons?

Gov. WALTER LYON: Counsel for the witness advises him to decline to answer for the reasons above stated. You can note my appearance as personal counsel for the witness.

THE WITNESS: I am not certain now whether I have answered or not. Have I answered it? If not,

I will state again why. I decline to answer on advice of attorney for the Government and on the advice of my own counsel, and also because in the recent immunity plea that was set up in our defense, and which was decided against us, we were told that any evidence which we gave, as I understand it, in such a hearing as this, would not make us immune, or would not give us immunity, and because my evidence here might tend to incriminate me. 1

Mr. GROSVENOR: Counsel for the Government states that he has not advised and does not now advise the witness in the premises, but simply states the position of the Government on the questions of law involved, and leaves it to the witness to decide for himself whether he will answer or not. 2

BY Mr. HONEYMAN:

Q. Mr. Ahrens, were you subpœnaed to attend here today? A. No, sir.

Q. How did you come to be here?

A. Why, I met you gentlemen down at the hotel and you asked me to come here.

Mr. HONEYMAN: Counsel for the Colwell Lead Company gives notice that because of the refusal of the witness to answer these questions, which are material to the defense of the Colwell Lead Company, he will be unable to proceed further with the examination of this witness at this time, and will be obliged to apply to the court for instructions compelling the witness to answer. 3

QUESTIONS BY Mr. NOBLE, OF COUNSEL FOR THE WITNESS.

BY Mr. NOBLE: 4

Q. Mr. Ahrens, referring to the statements of the Government and to your previous answers that you were one of the defendants in the suit brought in the United States Circuit Court for the District of Maryland, I ask you whether or not you made answer in that case, pursuant to a subpœna, under oath? A. I did, sir.

Q. Will you please state what the date was on which you verified your Answer? A. September 30, 1910.

Q. And that Answer was thereafter filed as part of your defense in Baltimore? A. Yes, sir.

Mr. NOBLE: I may call him in his own defense.

No Cross Examination.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Mr. HONEYMAN: Counsel for the Colwell Lead Company now asks that the witnesses be produced on an application before the court for an order compelling them to answer, and that they be held constructively in attendance until that can be arranged for by certification of these proceedings.

Mr. NOBLE: It might be inconvenient for the witnesses to wait around all the time, so I will agree to produce them at the time.

Mr. HONEYMAN: Counsel for the Colwell Lead Company asks counsel for the Government to extend the time, of the Colwell Lead Company, until such application can be made, for the completion of its evidence, due to the refusal of the witnesses to answer the questions put to them by the counsel for the Colwell Lead Company.

Mr. GROSVENOR: Counsel for the Government states that the time of the defendants in this case has been extended with his consent from April 1 to April 8. He will decline to accede to a request, in other words, he will resist any application for an extension of time beyond the date indicated.

Mr. NOBLE: Counsel for the defendants has requested his office—I have been away from there, I may say, since the early part of last week—to notify counsel for the Government that he intended to make an application in Baltimore on Saturday of this week, at the opening of court or as soon thereafter as counsel can be heard. I understand that counsel for the Government has not received that notice.

Mr. GROSVENOR: No, but this notice will be satisfactory. This notice is sufficient, and counsel for Govern-

ment is quite willing to have the motion heard on that day or any other day. 1

(Counsel then conferred.)

Mr. NOBLE: In view of the statement of the stenographer, that he understood that this application was to be made on Saturday in Baltimore, it may be that I shall have to ask the Government to attend on that date, and I shall endeavor to ascertain as quickly as possible what the convenience of the court is to hear the application, and ask the counsels' attendance at that time.

Mr. GROSVENOR: That will be agreeable. 2

Mr. HONEYMAN: I will endeavor to have my application made at the same time.

Mr. GROSVENOR: That is your application to compel the witness to answer?

Mr. HONEYMAN: My application for an extension of time and to compel the witnesses to answer.

At this point the taking of evidence was adjourned until further notice.

Adjourned.

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4

1 IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

2 Post Office Building, Pittsburg, Pa.,

April 17, 1911.

Pursuant to notice, the taking of evidence on behalf of the defendant, the Colwell Lead Company, was resumed this 17th day of April, 1911, in the Post Office Building, at Pittsburgh, Pa., before C. John Beeuwkes.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
3 HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
On behalf of the Standard Sanitary Mfg. Co., *et al.*
ROBERT B. HONEYMAN, Esq.,
On behalf of the Colwell Lead Co., Dr. Duryea and B. O. Tilden, Esq.
Gov. WALTER LYON,
On behalf of Edwin L. Dawes, Esq., *et. al.*
RUSSELL T. MCFALL, Esq.,
On behalf of the Union Sanitary Mfg. Co., L. C. Huesmann and E. V. Brigham.
4

Mr. GROSVENOR: I wish you would state on the Record that this hearing was called for 10:30 this morning, that counsel for the Government and the Examiner and stenographer have been here ready to proceed since that time, but that the first witness was not called until 11:22 A. M.

Mr. HONEYMAN: I would also like to have you note that Mr. Honeyman was ready and present at 10:30

prepared to go ahead with the examination of the witnesses, that the witnesses were subpœnaed, but for some reason have not put in an appearance until this time. 1

EDWIN L. DAWES, a witness of competent age, produced on behalf of the defendant, the Colwell Lead Co., having been first duly cautioned and sworn, testified as follows:

Mr. GROSVENOR: Mr. Dawes, before you testify I want to say something to you very briefly. You know you are a defendant in this suit and also in the suit in Detroit, which is the criminal suit involving the same matters and things. Now, it is probable that any testimony which you give and which is material in this civil suit may be material and relevant in the criminal suit. I want to point out to you that under these circumstances, relying on the Fifth Amendment, you may decline to answer any questions which Mr. Honeyman, counsel for the Colwell Lead Company, may put to you, which may tend to incriminate you. That is, you may decline to answer those questions which will tend to incriminate you. 2

I also want to tell you that if you do answer you will waive your constitutional privilege, and as counsel for the Government I desire to state that the Government wants it understood that you are not called on behalf of the Government; you are not necessary to the Government's case, and no immunity is promised you. In other words, if you testify you do so at your own risk. 3

THE WITNESS: In other words, I am to consult with my counsel.

Mr. GROSVENOR: I don't care whether you do that or not, but I feel it is my duty to state to you that you testify with no promise of immunity and waiving your constitutional privilege. 4

Mr. HONEYMAN: I think the interference of the Government with the witness called by the Colwell Lead Company is entirely uncalled for, it is highly improper and prevents the Colwell Lead Company from procuring evidence which is material, proper and necessary in the trial of this equity suit. The equity suit was brought by the Government and it

1 is being pushed by the Government, and the Government is now interfering with the effort of the Colwell Lead Company to establish its defense to that suit. We think the effort of the Government to hang us on the one hand, and to endeavor to prevent us from avoiding the hanging on the other, is absolutely unfair and grossly improper.

Mr. NOBLE: I also desire to state that as counsel for the defendants, other than the Colwell Lead Co., Dr. Duryea and Mr. Tilden, I object to the statement of counsel for the Government because it puts the de-
2 fendants in a position of being unable to answer questions fully and freely in their own defense, or to give testimony freely in response to questions which may be addressed to them by any counsel; that it is manifestly unfair to put the defendants in the position where they are being sued and the suit is being presed in an unkindly manner, and then warn them that they may not freely present their defense without the danger of incriminating themselves or waiving any rights which they may have; that this suit is brought by the Government against the various de-
3 fendants, including Mr. Dawes, the witness now on the stand, and Mr. Dawes and others were compelled by service of a subpœna upon them to answer, under oath, in this suit, which answer has heretofore been filed in the Circuit Court of the United States for the District of Maryland; that it is manifestly unfair not to permit the defendants, including Mr. Dawes, the witness, to present whatever evidence they may desire to present in their defense.

Mr. GROSVENOR: I do not advise you either way, to answer or not to answer. Just use your own dis-
4 cretion. I want the position of the Government to be made clear to you before you do answer.

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Dawes, state your position?

A. I am second vice-president and general manager of factories of the Standard Sanitary Manufacturing Company.

Q. Where do you reside?

A. New Brighton, Beaver County, Pennsylvania.

Q. You were general manager of factories of the Stand-

ard Sanitary Manufacturing Company during the years 1908, 1909 and 1910? A. Yes. 1

Q. Do you know the Colwell Lead Company? A. I do.

Q. You are a defendant in the equity suit, or in the Petition in Equity brought by the United States against the Standard Sanitary Manufacturing Company, and others, in the Circuit Court for the District of Maryland?

A. Yes, sir.

Q. What is the business of the Colwell Lead Company?

A. They are both manufacturers and jobbers, I believe.

Q. You refer now to the manufacture of Standard sanitary enameled ware? 2

THE WITNESS: Not the Standard.

Mr. HONEYMAN: I mean sanitary enameled iron ware.

A. Yes, sir.

Q. Do you know whether or not they buy enameled iron ware? A. They do.

Q. Do they buy from the Standard Sanitary Manufacturing Company? A. They do.

Q. Do you know whether or not they sell to the jobbing trade? A. I do not. 3

Q. Have you ever known of them as competitors of the Standard Sanitary Manufacturing Company? A. No, sir.

Q. If they did sell to the jobbing trade to any extent, would not you meet them as competitors? A. Yes, sir.

Q. Can you answer the question whether or not they sell generally to jobbers? A. No, sir, I cannot.

Q. They might sell in isolated cases and you not know of it? A. They might sell their excess product.

Q. But they could not sell in any quantity without your knowing it? A. I think not.

Q. Don't you know that they do not have any excess product, from the fact that they buy from you? 4

A. Well, that might be on certain lines that they would have. Of course they would hardly sell excess and buy from us too.

Q. What do they buy from you? A. Our general line.

Q. All classes of enameled ware?

A. All classes of enameled ware, yes.

Q. Have they been buying from you during the last two or three years? A. They have.

Q. You know what the Arrott patent is, of course?

A. I do.

Q. Do you recall any correspondence with the Colwell Lead Company, or its president, Dr. Duryea, or its secretary, Mr. Tilden, on the subject of their using the Arrott patent?

A. I recall we had some correspondence about it.

Q. Do you remember when that correspondence took place, about?

A. It was somewhere in 1908, I believe about August or September.

Q. Do you know whether that correspondence continued until the following spring, 1909?

A. There were some letters passed between us. I could not give you the dates of them.

Q. Do you recall whether or not you told them that they could use the Arrott patent on the basis of $1.00 a day per furnace? A. Yes, sir.

Q. I hand you this letter, Mr. Dawes, and ask you whether that is your signature?

Mr. GROSVENOR: The Government consents to the admission of this letter without objection, and it is not necessary, therefore, for the witness to identify the same.

Mr. HONEYMAN: State if that is your signature to that letter?

A. Yes, sir.

Q. Was that letter sent by you to the Colwell Lead Company?

A. In the regular course of business; yes, sir.

Mr. HONEYMAN: I offer that letter in evidence as "Colwell Lead Company, Exhibit No. 1."

Letter referred to was then duly marked and filed as "Colwell Lead Company, Exhibit No. 1."

This letter reads as follows:

"Standard Sanitary Mfg. Co.,
"General Offices,
"Pittsburgh, U. S. A., Apr. 13/09.

"Mr. B. O. Tilden, President,
"American Sanitary Works,
"New York, N. Y.

"Dear Sir:

"In answer to your favor of the 10th inst., would "state that the license that we have given for the use "of our pneumatic dredge was $1.00 per furnace per "day while the furnace is in operation. In other "words, if you have ten furnaces on which you are "using the pneumatic dredges, it would cost you "$10.00 a day. Credit would be allowed for a furnace "out of operation for a week or greater length of time, "simply for a furnace to be shut down for a day or "two there would be no credit.

"Yours truly,
"E. L. Dawes,
"Mr."

Mr. NOBLE: What is the date of the letter?

Mr. HONEYMAN: April 13, 1909.

BY Mr. HONEYMAN:

Q. Mr. Dawes, have you ever been in the Colwell Lead Company factory at Elizabethport, New Jersey?

A. I have been.

Q. Within the last two or three years? A. No.

Q. Then you don't know of your own knowledge whether they are using the Arrott patent? A. No, sir.

Q. Did you ever have any conversation or did you ever have any discussion with anybody concerning any uniform licenses under the Arrott patent? A. Yes.

Q. Whom did you have such discussion or conversation with?

Mr. NOBLE: I notify the witness that in view of the notice given him by Mr. Grosvenor, counsel for the Government, and the provisions of law in such case, that he has the right to decline to answer that question, because it may tend to incriminate him.

THE WITNESS: I decline to answer the question on the advice of counsel.

Q. Did you ever have any conversation on the subject of the licensing under the Arrott patent with the Colwell Lead Company, or any representative of the Colwell Lead Company, other than the correspondence about which you have already testified?

THE WITNESS: The same answer.

Q. In order to make my question clear: you have testified to having certain correspondence with the Colwell Lead Company. Now I ask you whether subsequent to December 1st, 1909, you had any conversation or correspondence with the Colwell Lead Company, or any representative of the Colwell Lead Company, concerning any uniform license agreements concerning the Arrott patent?

MR. NOBLE: What was that question?

The stenographer then read the last question.

THE WITNESS: I decline to answer that on the advice of counsel.

MR. NOBLE: You had better note that you decline on the ground that it may tend to incriminate you.

THE WITNESS: Just add that to my answer, please.

Q. Were you present at any meeting between January 1st and June 1st, 1910, at which the Colwell Lead Company, or any representative of the Colwell Lead Company, was present? A. I don't recall any.

Q. You have known Mr. Tilden for some time, have you?

A. Yes, sir.

Q. And you were pretty well acquainted with him when you wrote this letter in April, 1909, which has been offered in evidence?

A. Yes, sir, I knew him in a business way and personally for a few years.

Q. And you knew when you wrote him this letter that he was the secretary of the Colwell Lead Company?

A. Yes, sir.

EXAMINATION BY MR. NOBLE, OF COUNSEL FOR WITNESS.

BY MR. NOBLE:

Q. Mr. Dawes, were you subpœnaed to come here today?

A. Yes, sir.

Q. In the suit concerning which Mr. Honeyman asked you some questions, in the Circuit Court in Maryland, did you make an answer in that case? A. Yes, sir.

Q. Were you served with a subpœna in that case?

A. Yes, sir.

Q. And was the answer which you made pursuant to that subpœna? A. Yes, sir.

Q. On what day did you verify your answer made in that case? A. The 1st day of October, 1910.

Q. Was your answer thereafter filed in Baltimore as your defense to this action? A. I suppose it was.

Q. You gave directions to have it done? A. Yes, sir.

Q. Was your answer as then made true?

A. To the best of my knowledge?

Q. Is it true today? A. Yes, sir.

Q. Mr. Dawes, you knew of the existence of what was known as the Sanitary Enameled Ware Association, did you not? A. Yes, sir.

Q. Was there ever any agreement, so far as you know, among the manufacturers, members of that association, to maintain prices on sanitary enameled iron ware?

A. No, sir.

Q. Was there ever any agreement among them to restrict output? A. No, sir.

Q. Did that association have anything to do with bringing about what has been known here as the licenses given by Mr. Wayman to the various manufacturers, being agreements similar to Petitioner's Exhibits 9 and 11 and Exhibits 8 and 9 attached to the Petition, and known as "License Agreement" and "Jobbers' License Agreement?"

A. No, sir.

Q. Did the members of that association—did the individual manufacturers who were members of that association have anything to do with bringing about the licenses granted by Mr. Wayman to which I have just referred? A. No, sir.

Q. Was there any connection of any kind, so far as you know, between that association, or any of its members, and Mr. Wayman, acting to bring about these licenses?

THE WITNESS: You mean a concerted action?

MR. NOBLE: Yes.

A. No, sir.

1 Q. It is charged in the Government's petition that the assignment to Mr. Wayman of the Arrott patent was conditional. Was there any agreement at any time between the Standard Sanitary Manufacturing Company and Mr. Wayman relative to the assignment of that patent, other than that expressed in the written papers being Petitioner's Exhibits Nos. 5 and 6? A. I will answer that no.

Q. During the year 1909, did you have any conferences with Mr. Wayman relative to the Arrott patent?

A. A number of them.

Q. Do you recall when those conferences began?

2 A. I cannot.

Q. If I were to tell you that it was some time after the middle of August and before the end of September, would that tend to refresh your recollection?

A. Well, it was along in there, some time.

Q. That they began? A. Yes.

Q. How frequently did you confer with Mr. Wayman?

A. A number of times; I cannot tell you.

Q. Did you seek him or did he seek you?

A. He sought me.

Q. What was the subject-matter of those conferences?

3 A. To purchase the patent, or a license to him to use it and re-license others.

Q. As I understand you, the object of those conferences on his part was either the purchase of the Arrott patent, or the obtaining from the Standard Sanitary Manufacturing Company the exclusive right to license other manufacturers?

A. Yes, sir.

Q. Did he ever obtain an option from the Standard Company to purchase the Arrott patent?

A. I think not; I don't recall.

Q. Did he ever obtain an agreement with you by which

4 you agreed that he could have an option?

A. Yes; that is, we agreed on a price ultimately at which he could have the patent; whether that was an option or not I cannot recall. Is that an answer to the question?

Q. Yes. You gave him an oral option? A. Yes, sir.

Mr. GROSVENOR: I object to that as leading.

Q. Do you recall the date that you gave him the oral option? A. No, sir; I do not.

Q. If I told you that it was December, 1909, would that refresh your recollection? 1

A. I remember it was in December, close on to the end of the year.

Q. And at that time you gave him an option for the Standard Company to acquire the Arrott patent?

A. Yes, sir.

Mr. GROSVENOR: I object to that as leading.

Q. Then, let us put it this way: what was the option which you gave him and which you mentioned?

A. The option was covered by this agreement. 2

Q. You mean it was later embodied in written form?

A. Yes.

Q. And the option which was later embodied in written form was substantially the same option which you gave him in the latter part of December, 1909? A. I would say yes.

Q. Do you recall when you agreed with Mr. Wayman upon the price which he was to pay for the Arrott patent?

A. The latter part of December, 1909, somewheres.

Q. The Government alleges in its bill that Mr. Wayman is the ostensible licensor under the Arrott and certain other patents, namely the Arrott patent No. 633,941, the Dithridge, 3 949,625, and the Lindsay, 939,918; was there any agreement of any kind, so far as you know, with Mr. Wayman, on the part of the Standard Sanitary Manufacturing Company, or anyone else, whereby Mr. Wayman was to become the "ostensible licensor" of these licenses to which I have previously referred? A. No, sir.

Mr. GROSVENOR: Where is that term?

Mr. NOBLE: On page 16 in the second full paragraph on that page, about five lines down.

Mr. GROSVENOR: Thank you. 4

BY Mr. NOBLE:

Q. It is stated in the Government's Petition that the defendants had agreed upon a price list wherein were stated all the articles of sanitary enameled iron ware made by all of the defendants and in which were specified the prices at which those articles should be sold by the defendants throughout the United States and the re-sale prices which jobbers should observe in making sales of the same articles

1 to their customers. In other words, this price list arrived at by agreement and consultation between defendants and without competition between them fixes the price which every user of sanitary enameled iron ware in the United States must pay for every article manufactured by the defendants. Is that true? A. No, sir.

Q. Was there ever any agreement between the Standard Sanitary Manufacturing Company and any other company manufacturing sanitary enameled iron ware agreeing upon prices at which sanitary enameled iron ware should be sold either to jobbers or to consumers? A. Not to my knowledge.

2 Q. Now, it is stated in the Government's Petition, on page 15: "All of the defendants determined and agreed that three competing patents, being patents for tools called 'dredger for pulverulent material,' 'pneumatic sieve' and 'enameling powder distributor' respectively should be assigned by three defendants, each of whom owned one patent, to defendant E. L. Wayman, each patent for a nominal consideration and subject to reassignment at the expiration of a short term on the demand of the party making the assignment to Wayman." Then it alleges that these three patents are the ones to which I have called your attention before.

3 Is that allegation true?

A. I would say no, although some of those things I had nothing whatever to do with.

Q. You have no knowledge of such an agreement?

A. None whatever.

Q. You do know the terms under which the Arrott patent was assigned to Mr. Wayman? A. Yes, sir.

Q. And you do know those were not the terms under which the Arrott patent was assigned to Mr. Wayman, is that true? A. No, sir.

Q. It is not?

4 THE WITNESS: Well, I don't understand the question.

MR. NOBLE: Read it, please.

The stenographer then read the last question.

THE WITNESS: They were assigned under the written agreements.

Q. Those being Exhibits 5 and 6? A. Yes, sir.

Q. Mr. Dawes, was there any agreement between the Standard Sanitary Manufacturing Company, or anyone con-

nected with the Standard Sanitary Manufacturing Company, or anyone else, any other manufacturer, or with any other manufacturer and Mr. Wayman, other than is expressed in the written papers known as "Petitioner's Exhibits 5 and 6," so far as you know? A. No, sir. 1

No Cross Examination.

Examination concluded, and signing of deposition waived by agreement of counsel for the respective parties.

Mr. HONEYMAN: Of course, this witness having refused to answer certain questions, if Judge Holland grants the application which was made before him last Tuesday to compel the witnesses to answer, I shall recall Mr. Dawes to give answers to the questions which I asked him this morning. Other than that I will not require Mr. Dawes' attendance here. 2

Mr. NOBLE: Counsel for Mr. Dawes will agree to produce him on sufficient notice.

THOMAS WALKER, a witness of competent age, produced on behalf of the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows: 3

Mr. GROSVENOR: Mr. Walker, before you answer any questions which may be addressed to you by Mr. Honeyman, I have something to say to you. I am not sure if you were here when Mr. Dawes was on the stand. Did you hear what I said to him?

THE WITNESS: Yes, sir; I do not recall exactly what it was.

Mr. GROSVENOR: I want to remind you, then, that you are a defendant in this suit and also in the suit in Detroit, and the same matters are involved in both suits. Accordingly, nearly everything that you say here, which may be material on the questions of law involved in this case may be and probably will be relevant and material in the Detroit suit. It accordingly follows that as you are a defendant in the Detroit suit, which is a criminal suit, anything which you say here may incriminate you there. I want to tell you that under that circumstance, relying on the 4

protection which the Fifth Amendment of the Constitution gives you, you may decline to answer any questions which will incriminate you, if you desire to do so. But, if you do answer, I want to tell you this on behalf of the Government, that your testimony will be given voluntarily and at your own risk, and the Government is not expecting to give you any immunity by reason of your testifying. I simply want to make the position of the Government clear to you. You will, of course, do as you like.

THE WITNESS: I do not feel that I have done anything criminal. I will say that right now.

Mr. GROSVENOR: I just wanted to make plain what the Government's position is. I do not advise you one way or the other.

THE WITNESS: Thank you.

Mr. HONEYMAN: Counsel for the Colwell Lead Company desires to note the same objection as was made heretofore to the statement made by Mr. Grosvenor, counsel for the Government; that is the same objection which was made after counsel for the Government made his statement to Mr. Dawes.

Mr. NOBLE: Counsel for the defendants makes the same objection as to this witness Thomas Walker, he being also a defendant, which he entered upon the record as to the witness, Mr. Dawes.

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Will you state your business, please?

A. In the foundry and enameling business.

Q. Connected with what company?

A. McVay-Walker Company, Braddock.

Q. Where do you reside? A. Pittsburgh.

Q. Are you acquainted with the Colwell Lead Company?

A. I know of them and have heard of them. I don't think I have ever done any business with them.

Q. Have you known of them for some years?

A. Yes, sir; I have. They are in New York—I think they do busines there.

Q. Do you know what their business is?

A. I think it was originally the lead pipe business, or something of that kind. I am not certain.

Q. Do you know whether or not they manufacture sanitary enameled iron ware? 1

A. If they do, it is in a small way. I do not think they do much of an enameling business. I never heard of them much.

Q. Have you any general knowledge, as a manufacturer of enameled iron ware yourself, as to the business of the Colwell Lead Company in enameled iron ware? A. No, sir.

Q. Do you know whether or not, of your own knowledge, they sell to jobbers or plumbers and the general public?

A. I understood they did sell to the plumbers and the general public in New York. 2

Q. Do you know whether or not they sell to jobbers?

A. That I couldn't say.

Q. If they did sell to jobbers would you know of them as competitors in your business? A. Yes, I think we would.

Q. Have you ever run across them as competitors?

A. No.

Q. Do you know whether or not they sell generally throughout the United States? A. I don't know that.

Q. If they did, you would know of it?

A. Yes, sir, if they did I would know of it.

Q. But you never heard of it? 3

A. No, sir. I think they only commenced in that business of late years, according to my recollection.

Q. How lately?

A. I have heard of it about five or eight years.

Q. That is, you heard of them being in the enameled iron business in the last five or eight years or so? A. Yes, sir.

Q. If, during the last two or three or four years they sold generally throughout the United States, or sold to the jobbing trade, wouldn't you be liable to know of it?

A. Yes, sir; I never heard of them out in this section at all. I heard of them in New York. 4

Q. You simply heard of them as a local dealer in New York, is that the idea? A. Yes, sir.

Q. And you never heard of them selling to jobbers?

A. No; my understanding—

Mr. NOBLE (interrupting): Don't volunteer, Mr. Walker.

THE WITNESS: They are in the lead business, that's all.

1 By Mr. Honeyman:

Q. Mr. Walker, do you know of the Arrott patent? Do you know what they are? A. Yes, sir.

Q. Do you know whether or not the Colwell Lead Company used the Arrott patent?

A. I don't know that. I don't know that they ever used them.

Q. Did you ever have any discussion or conversation with anybody concerning any uniform license under the Arrott patent?

A. I never had, unless it was what we heard through
2 Mr. Wayman. I never heard of any discussion with anybody else about it.

Q. And you never had any discussion with the Colwell Lead Company on that subject? A. No, sir.

Q. Or anybody representing the Colwell Lead Company?

A. No, sir; never had any communication with them, so far as I know.

Q. You never had any communication with anybody representing the Colwell Lead Company, directly or indirectly?

A. No, sir.

Q. You never attended any meetings of enameled iron
3 ware manufacturers where the Colwell Lead Company was represented? A. I don't recall.

Q. If you did, you would remember it?

A. Yes, sir; I have a pretty good memory of people and faces when I meet them.

Mr. Honeyman: That is all.

Examination by Mr. Noble, of Counsel for Witness.

By Mr. Noble:

Q. Mr. Walker, you knew of the existence of the Sani-
4 tary Enameled Ware Association, did you not?

A. Yes, sir.

Mr. Grosvenor: There have been several of those associations. It might be advisable to make clear on the record that your question refers to the one which was formed in 1909.

Mr. Noble: Yes, sir.

The Witness: I refer to the one of which Mr. Wayman was Commissioner.

Q. Was your company or any of its officers members of 1
that Association?

A. We were solicited to join this association.

Q. Do you know whether or not you were members of that association? A. I am not positive about that.

Q. So far as you know, did that association have anything to do with bringing about the licenses similar to Exhibits Nos. 9 and 11, known as the "License Agreement" and the "Jobber's License Agreement," which were issued in the spring of 1910 by Mr. Wayman? A. No, sir.

Q. Did the McVay-Walker Company, or did any of its officers, at any time have any agreement with other manu- 2
facturers to maintain prices upon sanitary enameled iron ware? A. No, sir, decidedly not.

Q. Or to restrict the output? A. No, sir.

Q. Have you at any time ever had any agreement with other manufacturers to maintain prices on sanitary enameled iron ware? A. With no one.

Q. Or to restrict the output? A. No, sir.

Q. Is the Arrott patent used in your factory?

A. It was used under his license, and we used it before.

Q. Did you have any right to use it before?

A. It was a question whether we had or not. I had a 3
notice that they had a patent on it.

Q. You had no license from the Standard Sanitary Manufacturing Company?

A. No, sir, but we got a notice that they had a patent on it.

Q. They notified you to quit using it? A. Yes.

Q. Subsequent to that your company got a license from Mr. Wayman?

A. Yes, sir; my son knows more about that. That was my understanding.

Q. Now, the Government alleges in its Petition that all 4
of the defendants—and you and your son and your company are among those defendants—determined and agreed that three competing patents, being for tools called "dredger for pulverulent material," "pneumatic sieve," and "enameling powder distributor," respectively, should be assigned by three defendants, each of whom owned one patent, to the defendant, E. L. Wayman, each for a nominal consideration and subject to reassignment on a short term, on demand of

1 the party making the assignment to Wayman, and then the Government alleges that in accordance with this agreement, the Arrott, Dithridge and Lindsay patents were assigned by the Standard Sanitary Manufacturing Company, the Mott Company and the Wolff Company to Mr. Wayman?

A. I know nothing about that.

Q. Is that statement true?

A. I know nothing about it.

Q. Were you and your company or your son parties to any such agreement?

A. No, sir. I can answer that decidedly.

2 Q. Now, the Government further alleges that before these assignments to Mr. Wayman were made all of the defendants, and that includes the McVay-Walker Company, yourself and your son, had agreed upon all the essential features of this licensing arrangement, so-called; is that true?

A. No, sir.

Mr. GROSVENOR: This witness has testified that he don't know anything about it. I don't see the purpose of continuing this line of questioning.

Q. Is there any truth in that statement which I have
3 just made to you, so far as you, your son, and the McVay-Walker Company are concerned? A. No, sir.

Q. They further say: "they had determined upon all the "principal conditions and terms of the contracts to be en-"tered into by the manufacturers with Wayman, ostensible "licensor; upon the jobber's licensing agreements; upon the "resale prices at which jobbers should sell in interstate com-"merce to plumbers, retailers and consumers." Is that statement true, so far as concerns the McVay-Walker Company, yourself and your son? A. No, sir.

Q. Is there any truth in that statement at all so far as
4 it concerns the McVay-Walker Company, yourself or your son, Mr. Alexander Walker? A. No, sir.

Q. Mr. Alexander Walker is the gentleman to whom I have referred as your son? A. Yes, sir.

Q. Did you ever have any agreement with any of the other defendants, individuals or corporations—

A. (Interrupting): No, sir.

Q. (Continuing): —whereby you agreed that Mr. Wayman should license you and them? A. No, sir.

Q. So far as your company is concerned, I would like to know whether you ever had any talks with anyone relative to the license from Wayman similar to Petitioner's Exhibits Nos. 9 and 11, other than Mr. Wayman. 1

A. Nobody but Mr. Wayman. Any conversation or writings we ever had were with Mr. Wayman and nobody else.

Q. The Government goes on and says: "They"—meaning the defendants above referred to—"had agreed upon a price "list wherein were stated all the articles of sanitary enameled "iron ware made by all of the defendants and in which were "specified the prices at which those articles should be sold "by the defendants throughout the United States and the "resale prices which jobbers should observe in making sales "of the same articles to their customers. In other words, "this price list arrived at by agreement and consultation be- "tween defendants and without competition between them "fixes the price which every user of sanitary enameled iron "ware in the United States must pay for every article manu- "factured by the defendants." Is that statement true as to the McVay-Walker Company, yourself, or Mr. Alexander Walker, your son? 2

A. No, sir; I don't know how Alexander is concerned.

Q. Did you or the McVay-Walker Company agree upon any price list with other manufacturers? A. No, sir. 3

Q. At any time?

A. No, sir; never had any communication with any other manufacturers as to what we were going to sell at.

Q. Are you testifying here today under a subpœna?

A. Yes, sir.

Q. By whom were you subpœnaed?

A. By the Colwell Lead Company, I think it says. I have the subpœna here somewheres.

Q. Were you subpœnaed to answer in the civil suit in the United States Circuit Court for the District of Maryland? 4

A. I don't recall whether we were or not. If I was, I suppose it is down there.

Q. Mr. Walker, the fact is that you were served with a subpœna as the Marshal's return shows? A. Yes, sir.

Q. Pursuant to that subpœna did you make answer to the civil suit in Baltimore? A. Yes, sir.

Q. And did you direct that your answer be filed in this suit as your defense? A. I think we did, yes, sir.

Q. Upon what day did you verify your answer?
A. October 19, 1910.
Q. Was what you stated in your answer at that time true?
A. My recollection is that everything there is truthful.
Q. And is what you said in that answer true today?
A. Yes, sir.

Mr. NOBLE: That is all at present.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Walker, who has active charge of your company?
A. My son Aleck, but he don't do anything without calling me up on it. I am the owner, really. It is a close corporation, owned by the family.
Q. When were you subpœnaed to appear here?
A. I got this last week.
Q. When?
A. The subpœna will tell, I guess—last Saturday, I guess. I got this at home. It was left at the house. This (indicating) is marked April 17; it was the 15th day of April.
Q. When were you served? This shows the date that the subpœna was issued?
A. On Friday or Saturday. I was not home at the time.
Q. Did you receive a telegram about it? A. Yes.
Q. From whom? A. From the people in New York.
Q. Noble, Jackson & Hubbard? A. Um-hum.
Q. They notified you by wire that you would be a witness today?
A. No, they said there would be testimony taken. That is it.
Q. And notified you to be here? A. Yes.

BY Mr. NOBLE:

Q. Have you a copy of my telegram?
A. I have it at home, Alex may have it. I left it home for him.

Mr. NOBLE: This (indicating) is the one that I sent to Mr. Weiskittel. I sent that identical telegram to every defendant, as a means of proving the case of the defendants, without any consultation with anyone, and more particularly I did not consult with or notify Mr. Honeyman, who is counsel for the Colwell Lead Company.

Mr. HONEYMAN: I personally know nothing about

what Mr. Noble did and never saw the telegrams. I made my own arrangements with attorneys in Pittsburgh for the issuance and return of subpœnas on an affidavit which I forwarded for that purpose. 1

Mr. NOBLE: I dictated one copy of a telegram and instructed my assistant to send it to all of the defendants whom I represent.

BY Mr. GROVENOR:

Q. That telegram was received before the service of the subpœna, was it not?

A. The same day, I think; that is to my recollection; I know when I got home in the evening the subpœna was there. 2

Mr. GROSVENOR: I offer this telegram as "Petitioner's Exhibit No. 285," it being a copy of a telegram such as was sent to the witness, and I will offer this subpœna in evidence also as "Petitioner's Exhibit No. 286."

Telegram and subpœna referred to were then marked and filed as Petitioner's Exhibits Nos. 285 and 286 respectively.

Petitioner's Exhibit No. 285 reads as follows:

"TELEGRAM. 3

"New York, April 14-11.

"Anton Weiskittel Care A. Weiskittel Co.,
"Balto. Md.

"Defendants must close taking testimony in civil "cause by twenty-second have notified Government com- "mencing to take testimony Pittsburg Monday seven- "teenth desire your presence there Monday for full "conference and on succeeding days.

"Noble, Jackson & Hubbard." 4

Petitioner's Exhibit No. 286 reads as follows:

"United States of America, }
"Western District of Pennsylvania, } set.

"The President of the United States,
"To Thomas Walker,
"(Seal) "Pittsburgh, Pa.

"We command you, That laying aside all manner

"of business and excuses whatsoever, you personally "be and appear before Lindsay C. Spencer, Esq., an "Examiner duly appointed by the Circuit Court of the "United States, in and for the Western District of "Pennsylvania, at Pittsburgh, Pa. (Post Office Build-"ing) on Monday, April 17, 1911, at 10 o'clock A. M., "then and there to testify all and singular those mat-"ters and things which you shall know in a certain pro-"ceeding now depending in the said Court, and unde-"termined between The United States of America, and "Standard Sanitary Manufacturing Company, *et al.* "on the part of the said defendant Colwell Lead Co. "And hereof fail not, UNDER THE PENALTY OF "FOUR HUNDRED DOLLARS.

"WITNESS, the Honorable Edward Douglas White, "Chief Justice of the Supreme Court of the United "States, at Pittsburgh, this 15th day of April, 1911, "and in the 135th year of the Independence of the "United States.

"H. D. Gamble, Clerk."

Mr. GROSVENOR: That will be all.

Mr. NOBLE: I want to state that at the same time I dictated the notice to the Government that I would commence taking testimony in Pittsburgh this week, I also dictated the telegrams to the various defendants which I have referred to, and I likewise dictated a telegram to Mr. Lindsay C. Spencer, and to Mr. Weinberg, the stenographer, at the same time.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

ALEXANDER C. WALKER, a witness of competent age, produced on behalf of the Colwell Company, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. State your business, please?

A. Secretary and treasurer of the McVay-Walker Company.

Q. You are the son of the previous witness, Mr. Thomas Walker? A. Yes, sir.

Q. How long have you been connected with the McVay-Walker Company? A. About eight or ten years, I guess. 1

Q. You are active in the management of its affairs?

A. Yes, sir.

Q. You are familiar with the business of manufacturing sanitary enameled iron ware? A. Yes, sir.

Mr. GROSVENOR: You were present, Mr. Walker, and heard what I said to your father about his right to answer questions?

THE WITNESS: Yes, sir.

Mr. GROSVENOR: What I said to him applies to you. If you wish me to say it again, I will do so. 2

THE WITNESS: I think I understand it.

Mr. GROSVENOR: That is, that you don't have to answer unless you want to?

THE WITNESS: Yes, sir.

Mr. GROSVENOR: And if you do answer, you waive your constitutional privilege.

THE WITNESS: Yes, sir.

Mr. HONEYMAN: You understand the position of the Colwell Lead Company is that they have a separate defense in this equity suit, almost in the nature of an alibi, and the only way they can show their alibi is by the people alleged to be in the conspiracy. You appreciate that the Colwell Lead Company has a right to establish its innocence of the charge made against it in this Bill in Equity. We are calling you for the purpose of sustaining our separate defense. I want to say to you that we think you are required to answer our questions, and if you do not answer them, we will do the best we can to have the requirement enforced by one of the Judges of the Court. 3

Mr. GROSVENOR: You do as you like, of course. 4

Mr. NOBLE: I enter the same objection to the statement of the counsel for the Government as I made at the close of his statement made to Mr. Dawes.

Mr. HONEYMAN: I note an objection to the statement of counsel for the Government, and also object to the statement that the witness will do as he likes.

Mr. GROSVENOR: If that was too abbreviated, this

1 is what I mean: I don't advise you whether to answer or not to answer. That rests in your discretion.

By Mr. HONEYMAN:

Q. You know the Colwell Lead Company? A. Yes, sir.

Q. How long have you known of them?

A. I think ever since I have been in business.

Q. You know generally their business? A. Yes, sir.

Q. What is their business?

A. Manufacturing jobbers.

Q. They manufacture enameled iron ware? A. Yes, sir.

2 Q. Do you know whether or not they sell to jobbers or whether they are themselves a jobbing house?

A. They are themselves a jobbing house.

Q. Do you know to whom they sell, generally speaking?

A. No, sir; mostly in their own territory, I think, in the territory in which the company is located.

Q. Do they sell to jobbers or to plumbers?

A. Plumbers that I know of.

Q. Do you know of their selling to jobbers at all?

A. No, sir.

Q. If they did, do you think you would know of it?

3 A. Yes, sir.

Q. What is their territory?

A. New York City and the vicinity.

Q. You never heard of their selling outside of that locality, did you?

A. I think they have a branch house in New England.

Q. Worcester, Massachusetts? Did you ever hear of their selling anywhere else than there? A. No, sir.

Q. Do you know of their having agencies throughout the United States and selling generally throughout the United States? A. I don't think I do.

4 Q. If they did, would you know of it? A. Yes, sir.

Q. Did you ever run against them as competitors?

A. No, sir.

Q. You sell generally to jobbers? A. Yes, sir.

Q. Do you know whether or not the Colwell Lead Company use the Arrott patent? A. I don't know.

Q. Do you know whether or not they buy enameled iron ware? A. I don't know.

Q. They have not bought from your concern?

A. No, sir.

Q. You don't know whether they bought from others or not? A. No. 1

Q. You know yourself what the Arrott patent is?

A. Yes, sir.

Q. Your company has used it? A. Yes, sir.

Q. Did you ever have any discussion or consultation with anyone respecting the granting of uniform licenses under the Arrott patent? A. No, sir.

Q. Did you ever have any consultation or discussion with the Colwell Lead Company, or any representative of the Colwell Lead Company concerning the Arrott patent?

A. No, sir. 2

Q. Or with Dr. Duryea or Mr. Tilden? A. No, sir.

Q. Did you ever have any understanding or agreement, express or implied, with the Colwell Lead Company or any representative of the Colwell Lead Company concerning these patents? A. No, sir.

Q. Or concerning any resale agreements? A. No, sir.

Q. Or concerning the maintenance of prices? A. No, sir.

Q. Were you ever present at any meeting of manufacturers at any time or place where the Colwell Lead Company was represented? A. Yes, sir.

Q. Were you present at any meeting of manufacturers subsequent to January 1st, 1910, where the Colwell Lead Company was represented? 3

A. I am not certain.

Q. Do you recall any such meeting?

A. I don't think I do.

Q. There was such a thing as a manufacturers' association, was there not? A. Yes, sir.

Q. Which existed for a good many years? A. Yes, sir.

Q. And prior to December, 1909, you may have met a representative at some of those meetings?

A. Yes, sir, it is likely. 4

Q. Other than that, do you recall any meetings of manufacturers of sanitary enameled iron ware at which the Colwell Lead Company was represented?

A. No, sir, I do not remember any.

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR WITNESS.

BY Mr. NOBLE:

Q. Mr. Walker, were you subpœnaed to come here to testify today? A. Yes, sir.

1 Q. By whom were you subpœnaed?

A. The Colwell Lead Company.

Q. Did you make an answer in this case in the suit in Baltimore, brought in the Circuit Court of the United States for the District of Maryland heretofore? A. Yes, sir.

Q. Was a subpœna served upon you in that suit?

A. Yes, sir.

Q. And was it pursuant to that subpœna that you made the answer? A. Yes, sir.

Q. Was your answer filed in Baltimore thereafter?

A. Yes, sir.

2 Q. On what day did you verify that answer?

A. October 14, 1910.

Q. Was what you said in your answer at that time true?

A. Yes, sir.

Q. Is it true today? A. Yes, sir.

Q. Were you or your company a member of the Sanitary Enameled Iron Ware Association? A. Yes, sir.

Q. That was an association of which Mr. Wayman was at one time Commissioner? A. Yes, sir.

Q. Did that association have anything to do with bringing about the licenses granted by Mr. Wayman in 1910, 3 which are similar to Exhibits 9 and 11? A. No, sir.

Q. Did you or your company ever have any agreement at any time to maintain prices upon sanitary enameled iron ware with any other manufacturer? A. No, sir.

Q. Or to restrict the output? A. No, sir.

Q. Has your company at any time ever had any agreement with any other manufacturer to maintain prices or restrict output? A. No, sir.

Q. From whom did you first hear of the licenses known as the "License Agreement" and the "Jobber's License Agreement?" A. Mr. Wayman.

4 Q. Had your company used at one time a device similar to the Arrott invention? A. Yes, sir.

Q. Previous to obtaining a license from Mr. Wayman?

A. Yes, sir.

Q. Was any objection ever made to the use of that by you?

A. Yes, sir.

Q. By whom was that objection made?

A. The Standard Sanitary Mfg. Co.

Q. Thereafter your company was licensed by Mr. Wayman to use the Arrott and other patents, was it not?

A. Yes, sir. 1

Q. Mr. Walker, the Government has alleged in its Bill that "all the defendants," including yourself as an individual, your father and the McVay-Walker Company, had agreed with all the other defendants that three competing patents, known as the Arrott patent, the Ditheridge patent, and the Lindsay patent, they being patents for tools called "dredger for pulverulent material," "pneumatic sieve" and "enameling powder distributor," respectively, should be assigned by the three defendants, namely, the Standard Sanitary Manufacturing Company, the Mott Company and the Wolff Company, to Mr. Wayman as "ostensible licensor" for 2
a nominal consideration, subject to reassignment to the parties making the assignments to Mr. Wayman. Is there any truth in that allegation as far as concerns you— A. No, sir.

Q. Your father and the McVay-Walker Company?

A. No, sir.

Q. Did you ever have any agreement with any other defendant looking to the assignment of any patents to Mr. Wayman? A. No, sir.

Q. Did you ever have any agreement with any other defendant looking to the licensing of your company by Mr. Wayman? A. No, sir. 3

Q. The Government alleges also that all the defendants had agreed upon the essential features of the licensing arrangement before the assignments were made. Did you or the McVay-Walker Company have any agreement with any defendant as to any features of the licensing arrangement, so-called? A. No, sir.

Q. Previous to obtaining the license from Mr. Wayman?

A. No, sir.

Q. Did you at any time have any agreement with other manufacturers of sanitary enameled iron ware, defendants here, to maintain prices or limit output or otherwise sup- 4
press competition? A. No, sir.

Q. The Government further alleges that all the defendants had determined upon all the principal conditions and terms of the contracts to be entered into by the manufacturers with Wayman upon the jobber's license agreement, upon the resale prices at which jobbers should sell in interstate commerce to plumbers, retailers and consumers, alleging Wayman to be the "ostensible licensor." Is that statement true as to you or the McVay-Walker Company?

1 A. No, sir.

Q. Is there any truth in it as to you or the McVay-Walker Company? A. No, sir.

Q. The Government further alleges that all the manufacturers, including yourself and the McVay-Walker Company, had agreed upon the prices of the sanitary enameled iron ware manufactured by the defendants, and that the manufacturers should observe certain prices of sale and resale prices to jobbers. In other words, that a price list had been agreed upon or arrived at by agreement and consultation between the various defendants and without competition be-
2 tween them, fixing the prices on sanitary enameled iron ware in the United States. Is that statement true? A. No, sir.

Q. As to you or the McVay-Walker Company?

A. No, sir.

Q. Or anybody connected with it? A. No, sir.

Q. You have general charge of the McVay-Walker Company's business, have you not? A. I have had.

Q. If any such agreement was made, you would know about it, would you not?

A. Yes, sir. I might alter that statement that I have had full charge of the company. I haven't charge of it, but
3 I am familiar with everything that occurred.

Q. Have you ever had any agreement with anyone concerning the Arrott patent or the Ditheridge patent or the Lindsay patent, other than Mr. Wayman? A. No, sir.

Q. Did you or your company have any agreement with any other manufacturer in regard to the assignment of the patents, which I have mentioned before, to Mr. Wayman?

A. No, sir.

Q. Or did you have any agreement with any other defendant as to the issuing of licenses under those patents by Wayman to you or to anyone else?

4 THE WITNESS: I don't understand that question.

Mr. NOBLE: Will you read it, please?

Stenographer then read the last question.

THE WITNESS: I don't quite understand it.

BY Mr. NOBLE:

Q. Well, did you have any agreement with any other manufacturer defendant in this action as to the issuing of

licenses by Wayman to you or to any other manufacturer? A. No, sir. 1

Mr. NOBLE: I think that is all.

Examination Suspended.

At this point the examination of the witness was suspended, and a recess was taken for one hour.

After Recess. 2

ALEXANDER C. WALKER, resumed the stand for cross examination, and testified as follows:

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Walker, you knew during the early part of 1910, that is from about January up to May, that the various manufacturers were having meetings with Wayman respecting the entering into of licensing arrangements?

Mr. NOBLE: I object to the question as assuming knowledge on the part of the defendant which nothing in the record shows he has knowledge of. The witness stated that he had no meetings with any manufacturer wherein he discussed or conferred concerning the license agreement which Mr. Wayman later gave his company. 3

THE WITNESS: Well, Mr. Noble—

Mr. GROSVENOR: Just answer the question. Don't talk to your counsel now, please.

THE WITNESS: May I ask—

Mr. GROSVENOR: Just read the question. If it is not clear, I will make it clear. 4

THE WITNESS: I thought counsel had the right to advise me as to whether I should answer the question or not. I have the privilege of refusing to answer.

Mr. GROSVENOR: You have lost it. I warned you when you went on the stand that if you answered these questions you would be subjected to cross examination.

Mr. NOBLE: Mr. Walker, in view of the statement made to you at the beginning of your testimony by

1 the counsel for the Government, and of the law in such case, I advise you that you have the right to decline to answer any question which you may think may tend to incriminate you.

THE WITNESS: Can I ask for your advice?

Mr. NOBLE: Yes.

THE WITNESS: Well, I ask your advice.

Mr. GROSVENOR: My understanding of the law is that you have no right to consult counsel respecting the privilege. Of course, there is no one to rule on these questions here, but everything that you say goes on the Record. Now, will you read the question to 2 the witness again, and let him state if he will answer or not?

The stenographer then read the last question.

A. No, sir.

Q. Did you receive letters from time to time from Mr. Wayman respecting the entering into of a license agreement with him, under the Arrott patent? A. Yes, sir.

Q. Did that correspondence enlighten you as to what other manufacturers were indicating whether they would or would not enter into a licensing arrangement with Wayman? 3

Mr. NOBLE: I object to the question on the ground that the Government is asking about certain correspondence which counsel for the Government has, in answer to his question, elicited information from the witness that he received referring to the licensing agreement, so that the correspondence speaks for itself, and I object to the attempt on the part of the Government trying to ascertain what that correspondence contains by such a question.

Mr. GROSVENOR: Read the question, please.

4 The stenographer then read the last question.

Mr. NOBLE: My objection is renewed.

THE WITNESS: Do you wish me to refuse to answer when you object?

Mr. NOBLE: No, I stated my objection on the record. If the question tends to incriminate you, you have the right to refuse to answer.

THE WITNESS: Please repeat the question.

The stenographer again read the question.

A. There was a meeting— 1

Mr. NOBLE: Just answer the question whether that correspondence enlightened you as to whether other manufacturers would make a licensing arrangement with Mr. Wayman.

A. Yes, sir.

BY Mr. GROSVENOR:

Q. So you knew he was trying to get licensing agreements with other manufacturers than yourself?

A. Yes, sir.

Q. Your company signed an agreement with Mr. Wayman on May 6th, 1910, is that right? 2

Mr. NOBLE: One minute—

THE WITNESS: I don't remember the date.

Mr. NOBLE: Wait a minute. You have a right, as to that question to decline to answer on the ground that it would tend to incriminate you, because the Government alleges in this case and in the indictments which were found in Detroit, that the making of that agreement was unlawful and constituted a crime; therefore, your constitutional privilege gives you the right to decline to answer that question, on 3 the ground that it would tend to incriminate you, and I advise you that that is your right.

THE WITNESS: Well, I decline to answer that question on the ground that it may tend to incriminate me.

Mr. NOBLE: The Government has no right to ask you to answer any question that would tend to incriminate you, until they take that question to a United States Judge and let him pass on it.

Mr. GROSVENOR: We don't want to get into a discussion of the law here. I want to read you this, as 4 I think your counsel is improperly advising you. In the case of Sawyer *vs.* the United States, 202 U. S., 165, Justice Peckham, of the Supreme Court, said:

"It has been held in this Court that a prisoner who "takes the stand in his own behalf waives his consti- "tutional privilege of silence, and that the prosecu- "tion has the right to cross examine him upon his "evidence in chief with the same latitude that would

1 "be exercised in the case of an ordinary witness as to "circumstances connecting him with the crime."

I want you to know that, because that is the reason I made the statement I did this morning to the witnesses when they went on the stand.

Mr. NOBLE: I object to counsel for the Government attempting to intimidate this witness. If counsel for the Government wants an answer he has his remedy and can go to the Court and ask him to instruct the witness to answer.

Mr. GROSVENOR: Read the question, please.

2 Last question was then read by the stenographer.

Mr. NOBLE: I advise you of your constitutional right as before stated, that you need not answer that question. This is not a criminal case. You are here under subpœna issued by the Colwell Lead Company, and you need not answer that question under your constitutional right if you claim that as your privilege.

THE WITNESS: I claim my constitutional right as a privilege, and do not care to answer that question.

Mr. GROSVENOR: Were you present at a meeting in
3 Pittsburgh, in April, 1910, at which Mr. Wayman and other defendants in this case were present?

Mr. NOBLE: I advise you that is one of the meetings which the Government alleges, and about which it has shown some evidence that it was an unlawful meeting, and which constitutes a part of the alleged offense for which you were indicted in Detroit. Accordingly, on the grounds previously stated, you may claim your right not to answer.

THE WITNESS: I claim my right again, and do not care to answer.

4 Mr. GROSVENOR: That is on the ground that it will tend to incriminate you?

Mr. NOBLE: On the ground that it might tend to incriminate him.

BY MR. GROSVENOR:

Q. Was your company a member of this association of enameled iron ware manufacturers?

THE WITNESS: You mean the association that existed some time in the past?

Mr. GROSVENOR: That existed in the years 1909 and 1910? 1

A. Yes, sir.

Q. Mr. Walker, your counsel, Mr. Noble, read certain allegations from the Government's petition on page 16 or stated the gist of them. I wish to cross examine you in respect to these. On page 16 this statement is made: "before the assignments were made all the defendants had "agreed upon all the essential features of the licensing ar-"rangement." Were any of the terms of the license agreement which you entered into with Wayman discussed at a meeting in April at which you, Wayman and other defendants were present, the meeting being in Pittsburgh? You don't have to wait for counsel— 2

Mr. NOBLE: Yes, Mr. Walker, you have to wait until I object.

Mr. GROSVENOR: Your privilege is a personal one and rests entirely with you.

Mr. NOBLE: I object to the question on the ground that it is not cross examination. I asked the witness no question about any meeting in April or any other meeting. Mr. Walker, I advise you that you need not answer, therefore, as to the meeting in April about which the Government is inquiring. 3

THE WITNESS: I do not care to answer.

Mr. GROSVENOR: On what ground?

Mr. NOBLE: The form in which you take your personal privilege is that it might tend to incriminate you. Say that.

THE WITNESS: On the ground that it might tend to incriminate me.

Q. Now, at this meeting on May 6th, in New York, were any of the essentials of the licensing agreement, either of the manufacturers with Wayman, or of the jobbers with the manufacturers, in regard to the price list—that is, Wayman's price list—were any of those features discussed at this May meeting in New York? 4

Mr. NOBLE: I advise you that is not proper cross examination, and I object on that ground, and state that if the Government desires an answer to that question it may apply to the Court for instructions

requiring you to answer, and until you receive those instructions you may decline to answer that question, because the Government alleges that meeting had to do with an unlawful contract or conspiracy for which you were sued in Baltimore and indicted in Detroit?

THE WITNESS: On the grounds which Mr. Noble stated, I refuse to answer.

Q. That it will incriminate you?

A. That it might tend to incriminate me.

Q. This part of the Petition continues: "They"—that is the defendants—"had determined upon all the principal "terms and conditions of the contracts to be entered into by "the manufacturers with Wayman, ostensible licensor." Now, prior to this meeting in May, had you discussed with Wayman the terms and conditions of the contract which the various manufacturers were to enter into with Wayman?

Mr. NOBLE: I object to the question on the ground that the witness testified in his direct examination that he never had conferred with any of the defendants, other manufacturers, as to these terms; that is, that the entire discussion was with Mr. Wayman. Therefore, it is improper cross examination.

THE WITNESS: On the ground that it might tend to incriminate me, I do not care to answer.

Q. Now, it continues: "They had determined upon the "jobbers' licensing agreements." Now, prior to this meeting of May 6th, 1910, in New York City, had you considered forms or proposed forms of a jobbers' license agreement to be entered into by you with your customers, such forms being sent to you by Wayman?

THE WITNESS: Prior to May.

Mr. NOBLE: Prior to May 6th?

Mr. GROSVENOR: Read the question, please.

The stenographer then read the last question.

Mr. NOBLE: I object to the question because of the presence of the words "this meeting of May 6th"; if it is merely to fix a date and not to ask the witness to testify to any meeting, then I do not object. I call upon the counsel for the Government to state the purpose of the question.

Mr. GROSVENOR: Read the question again.

Stenographer then read the question referred to. 1

Mr. GROSVENOR: I think the question is clear. Will you answer it?

Mr. NOBLE: Do you mean merely to fix a date by the words "this meeting of May 6, 1910, in New York City?"

Mr. GROSVENOR: The question stands as I asked it. Will you answer it?

Mr. NOBLE: Then I object to the witness answering any question which involves a covert attempt on the part of the Government to get the witness to testify to a meeting which the Government contends was unlawful, in the hope that he may testify to something that would incriminate him. 2

THE WITNESS: On the ground that it may tend to incriminate me, I decline to answer.

Q. This continues: "They had determined upon the resale prices at which the jobbers should sell in interstate commerce to the plumbers, retailers and consumers." Did you ever have any discussion with Wayman, prior to the entering into of this license agreement with him by your company, as to the resale prices which you and the other manufacturers should observe? 3

Mr. NOBLE: I object to the question on the ground that the witness has already testified that his conversation with Mr. Wayman and his conferences in respect to this matter were solely in respect to his company, and that it is an attempt to ask the witness to testify as to other manufacturers and is not cross examination.

THE WITNESS: On the ground that it may tend to incriminate me, I decline to answer.

Mr. NOBLE: Counsel for witness states that as to any of these questions which counsel for Government is asking the witness, he may apply to the Court for an order requiring an answer, if he desires to do so. 4

Q. The Petition continues "They"—the defendants—"had agreed upon a price list wherein was stated all the ar-"ticles of sanitary enameled iron ware made by all of the "defendants, and in which were specified the prices at which "those articles should be sold by the defendants throughout "the United States, and the resale prices which jobbers

"should observe in making sales of the same articles to their "customers." Was this price-list herein referred to discussed at any meeting in May in New York? I refer to the meeting at which the evidence shows your agreement was entered into with Wayman.

Mr. NOBLE: I advise the witness that this alleged meeting is one of the meetings which it is claimed by the Government was unlawful, and for which he is sued in Baltimore and indicted in Detroit. Furthermore, I object to the question on the ground that it is not cross-examination, since the meeting referred to, alleged to have taken place by counsel for the Government, was not referred to in the direct examination of the witness, but I advise counsel for the Government that if he desires an answer to the question he may apply to the Court for instructions to the witness.

THE WITNESS: I decline to answer on the ground that it might tend to incriminate me.

Examination concluded; signing of deposition waived by agreement of counsel for the respective parties.

ANTON WEISKITTEL, a witness of competent age, produced on behalf of the defendant, the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. State your business?
A. Enameled iron ware manufacturer?
Q. Where do you reside? A. Baltimore.
Q. How did you happen to be in Pittsburgh today?
A. I got a telegram on Saturday to come here for a conference.
Q. From Mr. Noble?
A. Yes, sir, from Mr. Noble; yes, sir.
Q. Where is that telegram?

Mr. GROSVENOR: That is already in evidence. You have been present here most of the day, and probably have heard what I said to the other defendant witnesses. I hope you understand the position of the

Government in this matter—that is to say, you are a defendant in both the civil and criminal suits, and the same matters are involved in each, and if you testify here in the civil case, it may be material in the criminal case, so you may rely on your privilege under the Fifth Amendment to the Constitution, and refuse to answer. If you do testify and waive your constitutional privilege, then you will subject yourself to cross examination by counsel for the Government if he desires to cross examine you. I want you to know, in any event, that you must not testify here with the expectation of getting immunity by so testifying. Do I make myself clear? 1 2

THE WITNESS: Yes, sir.

Mr. HONEYMAN: Note the same objection here to the statement of counsel for the Government as was noted this morning to similar statements made to the previous witnesses.

Mr. NOBLE: Please note the same objection to the statement of counsel for the Government which I put on the Record at the close of a similar statement made to the witness, Mr. Dawes.

Mr. HEATH: And more particularly to the statement of counsel that the Government gives immunity. The witness is advised that the immunity flows from the Statute. 3

BY Mr. HONEYMAN:

Q. You were subpœnaed this morning? A. Yes, sir.

Q. You did not know before this morning that you were to be subpœnaed? A. No, sir.

Q. Your business, you say, is the iron enameled ware business? A. Yes, sir.

Q. Do you know the Colwell Lead Company? 4

A. Yes, sir.

Q. How long have you been in the enameled iron ware business? A. Fifteen years.

Q. How long have you known of the Colwell Lead Company?

A. Well, I have known of them ten to fifteen years; quite a while, anyhow.

Q. Do they buy enameled ware from you? A. Yes, sir.

1 Q. Have they bought enameled ware from you at different times in the last few years? A. Yes, sir.

Q. Do you know how long they have been manufacturing enameled iron ware themselves?

A. Well, I judge about ten years.

Q. Do you know their product? A. Yes, sir.

Q. Does it compete with your product? A. Yes, sir.

Q. To what extent?

A. Well, it is a first-class product.

Q. Do they sell to the jobbers, or to the plumbing trade?

A. They sell to the plumbing trade.

2 Q. Do they sell to jobbers? A. Not to my knowledge.

Q. If they did, would you know of it?

A. Yes, sir, I suppose so.

Q. Their competition with you is that by selling to the plumbing trade they may supply trade that otherwise would come to you? A. Yes, sir.

Q. They sell only in New York, I think you stated?

A. Yes, sir, I think so.

Q. You don't know if they sell at all to jobbers?

A. No, sir.

Q. Do you know whether they sell enameled ware

3 throughout the United States?

A. To my knowledge they do not.

Q. Do you know whether or not their business is restricted to New York?

A. I never met them anywhere except in New York.

Q. Do you know whether or not the Colwell Lead Company use the Arrott patent? A. I know they do; yes, sir.

Q. How do you know it?

A. Well, I can tell it by the class of ware that they make.

Q. What do you mean by that?

A. Well, it is a smoother ware than you can make by

4 hand.

Q. And you can tell by the appearance of the ware itself that they use the Arrott patent? A. Yes, sir.

Q. Did you ever have any conversation with anyone, or discuss with anyone, the question of licenses under the Arrott patents? A. Yes, sir.

Q. Did you ever attend any meeting of manufacturers at which the question of uniform licenses under the Arrott patent was discussed?

Mr. NOBLE: I advise you that in view of what was stated to you by the Government's counsel, under the law in such case you may decline to answer any questions which may tend to incriminate you. It is alleged by the Government in this case, and in the indictments in Detroit, that various meetings were had between the various manufacturers to fix among themselves uniform prices and other terms. I advise you that if you desire to do so, you may use your privilege and decline to answer. 1

THE WITNESS: I decline to answer.

Q. Did you ever discuss with Mr. Duryea or Mr. Tilden, or anyone connected with the Colwell Lead Company, the question of license agreements or uniform prices under the Arrott patent? A. No, sir. 2

Q. Did you ever have any agreement of any kind with the Colwell Lead Company concerning the Arrott patent, directly or indirectly? A. No, sir.

Mr. HONEYMAN: That is all.

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR WITNESS.

BY Mr. NOBLE: 3

Q. Mr. Weiskittel did you make an answer in the civil suit filed in Baltimore? A. I filed an answer, yes.

Q. Were you subpœnaed in that case? A. Yes, sir.

Q. Did you verify your answer? A. Yes, sir.

Q. And was that Answer filed under your direction thereafter as your defense to that suit? A. Yes, sir.

Q. Will you please state the date on which you verified it? A. The 30th day of September, 1910.

Q. Do you remember whether Mr. Heise made an Answer in that case? A. I cannot say I do.

Q. He is the secretary of your company? 4

A. Yes, sir, but in my presence he did not.

Q. Were you a member of the Sanitary Enameled Ware Association, of which Mr. Wayman was at one time Commissioner? A. Yes, sir, I was.

Q. Did that association have anything to do, directly or indirectly, with the licenses which Mr. Wayman proposed thereafter to your company and to other companies, similar

to Exhibits 8 or 9 and 11, known as the "License Agreement" and "Jobbers' License Agreement."

A. No, sir.

Q. From whom did you first hear of the idea of taking a license under the Arrott patent? A. Mr. Wayman.

Q. And is your answer the same as to the other patents known as the Ditheridge patent and the Lindsay patent?

A. Yes, sir.

Q. Do you recall about when it was that Mr. Wayman brought the matter to your attention for the first time?

A. Some time in May or June.

Q. The first time at which he brought the matter to your attention was when he came to Baltimore during the early part of March? A. Yes, sir.

Q. Mr. Wayman testified that he came to see you early in March, I think March 6th? A. Yes, sir.

Q. Does that refresh your recollection as to the date?

A. Yes, sir, March, 1910.

Q. Had you ever heard of or discussed the question of licenses under patents to manufacture sanitary enameled iron ware with anyone else, until Mr. Wayman brought it to your attention? A. No, sir.

Q. Was any such thought ever suggested to you by any other manufacturer of sanitary enameled iron ware?

A. No, sir.

Q. Or among the defendants in this suit? A. No, sir.

Q. The entire suggestion came, as I understand you, from whom? A. From Mr. Wayman.

Q. The Government has alleged in their petition that you and all the other manufacturers of sanitary enameled iron ware, who were made defendants in this suit, agreed to cause the assignment, or to bring about the assignment of the Arrott, the Ditheridge and the Lindsay patents to Mr. Wayman for a nominal consideration, subject to reassignment at the expiration of a short period; as to you or the Weiskittel Company, is that statement true? A. No, sir.

Q. Is there any truth in that statement that you or the Weiskittel Company ever had anything, of any kind, sort or description, to do with bringing about the assignment of these patents upon any terms to Mr. Wayman?

A. Only to Wayman.

Q. You did not do anything, though, to cause these people to assign these patents to Mr. Wayman? A. No, sir.

Q. You did not ask these people to assign the patents to him? A. No. 1

Q. When Mr. Wayman saw you in Baltimore early in March, did he tell you that he had an option upon any of these patents?

A. Yes, sir; he told me he had an option on the patents.

Mr. GROSVENOR: I object to this as hearsay.

Q. Now, the Government alleges in its Petition that you and all of the other defendants, previous to the assignment of these patents to Mr. Wayman had agreed upon all the essential features of the licensing arrangement. I ask you whether you or the Weiskittel Company ever agreed at any time with the other manufacturers of sanitary enameled iron ware, defendants in this suit, upon the essential features, or any of the features of the license agreements, similar to Exhibits 9 and 11, being what is known here as the "License Agreement" and the "Jobber's License Agreement"? A. No, sir, we did not. 2

Q. The Government further says that all the principal terms and conditions of the contracts made by Wayman with the other manufacturers had been determined upon by the defendants. Is that true as to you or the Weiskittel Company? A. Not as to ourselves, no, sir. 3

Q. Is there any truth in it at all as to you or the Weiskittel Company? A. No, sir.

Q. The Government alleges that Mr. Wayman was an "ostensible" licensor; is there any truth, as far as the Weiskittel Company is concerned, in that allegation, and in the rest of the Bill, which alleges that Mr. Wayman was not the bona fide owner of these patents, but had a colorable title or ostensible title?

A. So far as the Weiskittel Company is concerned, we thought he owned them absolutely. 4

Q. You had no thought to the contrary? A. No, sir.

Q. Has any such suggestion ever been made to you by any of the defendants, that there was anything to the contrary?

A. No, sir.

Q. The Government alleges that before the assignment of these patents to you and all the other defendants, they had agreed upon the price list which contains all the articles of sanitary and enameled iron ware manufactured by the

1 defendants; as to you and as to the Weiskittel Company, is that statement true? A. No, sir.

Q. Is there any truth in that statement as to the Weiskittel Company and yourself? A. No, sir.

Q. Did the Weiskittel Company at any time ever have any agreement with any other manufacturers to maintain prices on sanitary enameled iron ware? A. No, sir.

Q. Or did it ever have any agreement to restrict the output? A. No, sir.

Q. Was the answer which you made, verified and filed to the suit in Baltimore, the truth at the time you made it?

2 A. Yes, sir.

Q. And is it still the truth? A. Yes, sir.

Q. Mr. Weiskittel, the Government has alleged in the indictments against you and the other defendants, and there has been some evidence offered in the civil case, that there were meetings which took place at Mount Clemens, Michigan, of various manufacturers. Were you present at any of those meetings? A. Yes—

Mr. NOBLE (interrupting): Now, I want to say to you that while you are my witness, and I want to examine you fully and get all the testimony as to

3 everything, I want to call your attention to the fact that counsel for the Government has told you that you may decline to answer on the ground that it might tend to incriminate you, and I advise you that as to your rights, you have the right to decline to answer any questions which may tend to incriminate you in this suit. I want to examine you fully and completely, but I want to tell you what your rights are. Read the question to the witness again, please.

The last question was then read by the stenographer.

4 THE WITNESS: I decline to answer that question.

Q. On what ground?

A. On the ground that it might tend to incriminate me.

Mr. NOBLE: I wish to give notice that as to this witness I desire an opportunity to examine him fully, so that his defense to this action may be fully established, and to do so without any fear on the part of

the witness that he may not testify fully and freely in defense of his rights. 1

Mr. GROSVENOR: Well, go ahead and examine him. He is on the stand.

Mr. NOBLE: When you are through I will continue my statement. Counsel for the Government has put this defendant and other defendants in the position where they may not defend their rights without the fear of testifying to facts which may be used against them in the indictments now pending in Detroit, and on behalf of this witness I protest that he has the right to give his testimony at such time and under such circumstances as will enable him to testify freely, and that that cannot be done at this time. 2

Mr. GROSVENOR: Counsel for the Government suggests that the witness is on the stand and can be examined now, if his counsel is as anxious as the statement makes him appear to be. Are you through now?

Mr. NOBLE: I have gone as far as I can without going into matters similar to those covered by the question which I have asked the witness. There are many other matters concerning which I would like to examine this witness, concerning matters about which I started to inquire and subsequent thereto. 3

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Weiskittel, you were subpœnaed for the Colwell Lead Company in the court room, were you not?

A. This morning; yes, sir.

Q. In this court room? A. Yes, sir.

Q. In this room? A. Yes, sir.

Q. How did you happen to come here?

A. I came here through a telegram which I received in Baltimore on Saturday. 4

Q. That is the reason you came to Pittsburgh, you say?

A. Yes, sir.

Q. How did you happen to come to the court room?

A. I just came here.

Q. Why did you come here?

A. Well, I am naturally interested in this case, and I just came here to hear the testimony.

Q. Who told you there would be a hearing here?

A. I knew there would be a hearing here today.

1 Q. Did counsel ask you to come here? A. No, sir.

Q. You received this telegram (indicating Petitioner's Exhibit No. 285)? A. Yes, sir.

Q. At the time you first started to take the stand this morning, then you had not been subpœnaed, had you?

A. No, sir.

Q. Then Mr. A. C. Walker took the stand instead of you?

A. Yes, sir.

Q. You then went back to your seat, and that is the time you were subpœnaed; is that right?

A. Yes, sir; that is right.

2 Q. Did your counsel or anyone tell you that a subpœna would be served upon you if you waited a little while?

A. No, sir.

Mr. NOBLE: I told Mr. Weiskittel that I objected to his going on the stand to testify at the request of the Colwell Lead Company's counsel unless they subpœnaed him in the case, and I directed him not to do so.

BY Mr. GROSVENOR:

Q. On your direct examination Mr. Noble asked you
3 about a meeting that you had with Mr. Wayman in March?

A. Yes, sir.

Q. Which was where? A. In Baltimore?

Mr. HONEYMAN: This witness was subpœnaed by me, and put on the stand by the Colwell Lead Company, on direct examination. So far as the examination of Mr. Noble is concerned, I have nothing to do with that, and I want to state that Mr. Noble's examination of the witness had nothing to do with the Colwell Lead Company. I remained silent during the
4 examination of these witnesses by Mr. Noble because I understood that Mr. Noble had some questions to ask them on his own account. I am not taking part in Mr. Noble's examination in any way.

BY Mr. GROSVENOR:

Q. You testified in answer to Mr. Noble's question that you at that time discussed with Mr. Wayman the entering into of a license agreement with him? A. Yes, sir.

Q. You also testified on direct examination that you had

no agreement with the other defendants, or any of them, respecting the entering into of a license agreement? 1

A. Yes, sir.

Q. Now, did Mr. Wayman tell you at this meeting in Baltimore that other manufacturers of sanitary enameled iron ware were contemplating entering into a license agreement with him?

Mr. NOBLE: I object to that. Counsel is putting words into the witness' mouth. If counsel desires to know what Mr. Wayman said to Mr. Weiskittel, let him ask such a question as will elicit such facts.

Mr. GROSVENOR: Read the question, please. 2

The stenographer then read the last question.

A. Well, Mr. Wayman tried to get us to enter into this arrangement. What other arrangement he had, I do not know.

Q. You knew he was trying to get other manufacturers to enter into the agreement, did you not?

A. I knew he was the owner of the patents.

Mr. GROSVENOR: Read him the question.

The stenographer then read the last question.

THE WITNESS: I suppose he was; I don't know that. 3

Q. From that time, Mr. Weiskittel, in March, up until May, you knew that the other manufacturers, or a large part of them, were considering entering into a licensing agreement with Wayman?

Mr. NOBLE: I object to the question, first, because it is not proper cross examination, and secondly, because the Government alleges in its Bill, and has offered some evidence to show, that there were meetings which they claim to have been illegal. They allege in the indictments in Detroit that there were 4 various meetings and conferences which they claim were illegal and unlawful. I therefore notify the witness that in view of the statement of counsel for the Government, made when he took the stand, and the law in such cases, that he may decline to answer any questions covered by the indictments in Detroit which may tend to incriminate him. You may decline to answer on that ground.

1 THE WITNESS: I decline to answer the question on the ground that it might tend to incriminate me.

Mr. GROSVENOR: That is all.

Mr. HONEYMAN: The witness having refused to answer questions put to him by the counsel for the Colwell Lead Company, we now want to reserve our right to recall him after we get the decision from Judge Holland. We are foreclosed in our defense unless he is compelled to answer those questions.

Mr. NOBLE: I will produce him when you require him, unless you want him to wait around.

2 Mr. HONEYMAN: Well, that might require quite a long wait.

Examination concluded, and signing of deposition waived by agreement of counsel for the respective parties.

GEORGE W. FRANZHEIM, a witness of competent age, produced on behalf of the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

3 Mr. GROSVENOR: Mr. Franzheim, you have been here the larger part of the day, and I think you have heard the statements that I have made to the respective witnesses as to their rights to refuse to answer, and that if they do answer questions they will subject themselves to cross examination by counsel for the Government, and you, not being called by the United States, must not give testimony with the belief that you will be afforded immunity thereby.

4 Mr. NOBLE: I object to the statement of counsel for the Government made to this witness for the same reasons as stated in my objection made after a similar statement to the witness Dawes.

Mr. HONEYMAN: Note the same objection on behalf of the Colwell Lead Company to the statement made by counsel for the Government.

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. State your business, please. A. Promoter.

Q. You were in the business of the manufacture of sanitary enameled iron ware? A. Yes, sir.

Q. Up to what time? A. March 15, 1911.
Q. What company were you connected with? 1
A. The Wheeling Sanitary Manufacturing Company.
Q. Is that the company named as the Wheeling Enameled Iron Company of Wheeling, West Virginia?
A. That is the company which finally succeeded to it.
Q. You are the defendant in this proceeding in equity and in the indictments in Detroit? A. Yes, sir.
Q. Were you in the sanitary enameled iron ware business in 1908 and '09 and up until March, 1911?
A. Yes, sir, I was.
Q. You are familiar with the general trade conditions and general trade information in the enameled iron ware business? A. Yes, sir. 2

Mr. GROSVENOR: He is a promoter.
Mr. HONEYMAN: Since March, 1911.

Q. How long were you with the Wheeling Sanitary Manufacturing Company? A. From November, 1905.
Q. From November, 1905, to March, 1911, you were in the enameled iron ware business? A. Yes, sir.
Q. And since March, 1911, you have been a promoter?
A. Yes, sir.
Q. While you were with the Wheeling Sanitary Manufacturing Company you were familiar with general trade matters? A. Yes, sir. 3
Q. What were your duties with that company?
A. Secretary and treasurer.
Q. Did you know the Colwell Lead Company?
A. I have heard of them.
Q. Do you know their business?
A. I understood they sold enameled iron ware.
Q. Where do you live? A. Wheeling, W. Va.
Q. Do you know anything of the character of the business of the Colwell Lead Company in a general way? 4
A. I always understood that they were very small manufacturers selling direct to the plumbing trade.

Mr. GROSVENOR: I make the same objection as I made to the first of this class of witnesses, that they were not the proper witnesses to call to examine on questions of this kind relating to the Colwell Lead Company. This is not a proper witness to establish

1 what the character of the business of the Colwell Lead Company is.

Mr. HONEYMAN: Well, we have the testimony of the Colwell Lead Company, and of all the other manufacturers in the trade.

Q. Did you ever meet them as competitors in sales to jobbers throughout the United States? A. Never.

Q. Do you know as a matter of general knowledge, that the Colwell Lead Company have agencies throughout the United States, and sell generally throughout the United States? A. Not to my knowledge, no.

2 Q. If they did, would you be apt to know of it?

A. Probably.

Q. Did you ever have any conversation or discussion with any one concerning the licensing under the Arrott patent?

A. None whatever.

Q. Did you ever have any conversation of any kind, character or description, with Dr. Duryea, or Mr. Tilden, or anyone representing the Colwell Lead Company on the subject of the Arrott patents? A. None whatever.

Q. Or on the subject of any uniform license agreements?

A. None whatever.

3 Q. Or on the subject of the maintenance of prices?

A. None whatever.

Q. Did you ever have any agreement or understanding, express or implied, of any kind, character or description, with the Colwell Lead Company, or anyone representing it, on the subject of maintenance of prices, or anything which would amount to a restraint of trade in any way, shape or form? A. Never.

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR WITNESS.

4 Q. Mr. Franzheim, you spoke of several companies. Will you please explain that remark. The company which is a defendant in the petition in Baltimore, filed in the Circuit Court for the District of Maryland, is the Wheeling Enameled Iron Company. Now, were you an officer of that company? A. Yes, sir.

Q. What was your office? A. Secretary.

Q. Were you a director in that company? A. No, sir.

Q. What company succeeded that company?

A. The American Sanitary Manufacturing Company.

Q. Were you an officer of that company? 1

A. The secretary.

Q. Were you a director of that company? A. No, sir.

Q. What company succeeded the American Sanitary Manufacturing Company just named?

A. The Wheeling Sanitary Manufacturing Company.

Q. And that is the present company which you said succeeded the Wheeling Enameled Iron Company? A. Yes, sir.

Q. Are you connected with that company in any way?

A. No, sir.

Q. Have you been? A. Yes, sir.

Q. What was your relationship to that company? 2

A. I was the superintendent of the enameled iron department.

Q. Were you an officer of it? A. No, sir.

Q. Did these various companies transfer their assets, one to the other? A. Yes, sir.

Q. When did that take place as to the Wheeling Enameled Iron Company, approximately, I mean.

A. May 8, 1910.

Q. When did the American Sanitary Manufacturing Company transfer its property to the Wheeling Sanitary Manufacturing Company, approximately? 3

A. Well, about October, 1910.

Q. Did you have anything at all to do with the license agreement from Mr. Wayman to the Wheeling Enameled Iron Company? A. Nothing whatever.

Q. Did you ever discuss that with Mr. Wayman?

A. Never.

Q. Did you ever discuss it with any other manufacturer of sanitary enameled iron ware among the defendants in this action? A. No, sir, not at all.

Q. Were you a member of the Board of Directors of that company? A. No, sir. 4

Q. Was the matter ever brought to the attention of the Board of Directors? A. No, sir.

Q. How did you first learn of the granting of the license by Mr. Wayman to the Wheeling Enameled Iron Company?

A. Why, Mr. Wright mentioned it in an offhand way.

Q. And that is the first you knew of it?

A. Yes, sir, so far as I know.

Q. That was the only knowledge you had of it up to that time? A. Yes, sir.

Q. You were indicted up in Detroit, were you not?

A. As far as I know, I am.

Q. You are one of the defendants in this civil suit brought in the Circuit Court for the District of Maryland?

Q. As far as I know I am.

Q. Did you ever attend any meetings of manufacturers where this license agreement was discussed?

A. No, sir; never.

Q. Did you ever attend any meeting of manufacturers, formal or informal, at which it was discussed—

A. (Interrupting): None whatever.

Q. Or at which the maintenance of prices or the restriction of the output was discussed? A. None whatever.

Q. And your entire knowledge, as I understand you, of this so-called illegal act, comes from the information which Mr. Wright gave you and the fact that you are sued and indicted? A. That is all.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. The Wheeling Enameled Iron Company was the first named? A. Yes, sir.

Q. That company transferred its assets to the American Sanitary Manufacturing Company? A. Yes, sir.

Q. And that company transferred them to what company?

A. To the Wheeling Sanitary Manufacturing Company.

Q. What happened to the contracts of the Wheeling Enameled Iron Company—did they go over to the American Sanitary Manufacturing Company?

Mr. NOBLE: If you know?

A. As far as my knowledge goes, I should think they did.

Q. So the Wheeling Sanitary Iron Company stands today in the place of the Wheeling Enameled Iron Company?

A. The Wheeling Sanitary Manufacturing Company stands today in the place of the Wheeling Enameled Iron Company.

Mr. GROSVENOR: That is all.

Mr. NOBLE: I request the Government to note a discontinuance of this suit as against Mr. Franzheim.

Mr. GROSVENOR: That is all for this witness.

Mr. NOBLE: Will the Government please answer my

question? My request is for a discontinuance of this suit as against Mr. Franzheim. 1

Mr. GROSVENOR: That is all for this witness. There is no occasion for answering questions of that sort at this time.

Examination concluded, and signing of deposition waived by agreement of counsel for the respective parties.

WILLIAM ALBERT MYLER, a witness of competent age, produced on behalf of the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows: 2

Mr. GROSVENOR: Mr. Myler, you have been in court the greater part of the day—

THE WITNESS: Yes, I understand.

Mr. NOBLE: I make the same objection to the admonition of counsel for the Government to the witness as I stated previously as to the other witnesses.

Mr. HONEYMAN: Note the same objection to the statement of counsel as I made to the statement made to the previous witnesses.

DIRECT EXAMINATION BY Mr. HONEYMAN: 3

Q. Mr. Myler, you understand that the Colwell Lead Company is seeking with your testimony to establish their separate defense to this equity suit? A. I do.

Q. You understand, do you not, that their situation is materially different from the other defendants in this suit, and that their answer sets forth materially different facts?

A. Yes, sir.

Q. You understand also that unless the Colwell Lead Company can establish its defense by evidence, it is in an unfair position, do you not? A. Yes, sir. 4

Q. I will ask you in all decency and justice to help us to eliminate all the charges made against the Colwell Lead Company, regardless of any advice of counsel for the Government. State your business?

A. I am secretary and treasurer of the Standard Sanitary Manufacturing Company.

Q. How long have you been in that business and position?

A. I have been secretary since the organization of the company; secretary and treasurer for about nine years.

1 Q. And you are familiar with the enameled iron business?
A. I should be.
Q. Do you know the Colwell Lead Company?
A. Yes, sir, and have for a number of years.
Q. Do they buy enameled iron ware from your company?
A. They do.
Q. And you have known of them for a good many years?
A. Yes.
Q. Do you know generally their business? A. Yes, sir.
Q. What is it? A. Jobbers of plumbing supplies.
Q. Among other things are included enameled iron ware?
2 A. Yes, sir, that is included.
Q. What they buy from your company is enameled iron ware? A. Yes, sir.
Q. You do not make anything else? A. Yes, sir; we do.
Q. But the Colwell Lead Company buy only enameled iron ware from you?
A. So far as I know they only buy enameled iron ware.
Q. Do you know whether or not the Colwell Lead Company sell to jobbers or to plumbers?
A. I always understood they sell to plumbers only.
Q. Did you ever hear of their selling to jobbers?
3 A. I never have.
Q. If they sold to jobbers to any extent, would you know of it?
A. I should; yes, sir. I don't think they could without my knowing of it.
Q. Is the allegation of the Government true that the Colwell Lead Company had agents throughout the United States and sold to the jobbers as well as the plumbers?
A. I should say not.
Q. Do you know whether or not the Colwell Lead Company sells outside of New York City?
4 A. I never heard of them selling outside of New York City.
Q. If they did to any extent, would you know of it?
A. Yes, sir.
Q. Did you ever discuss with anyone, or talk with anyone about the licenses under the Arrott patent? A. Yes, sir.
Q. Did you ever discuss with any manufacturers at any meeting of manufacturers, in Detroit or at any other place, the question of uniform licenses under the Arrott patent?

A. I must decline to answer that question on the ground that it may have a tendency to incriminate me. 1

Mr. GROSVENOR: I fail to see the purpose of the question, because the witness testified that he had no conversation with any of the Colwell Lead people in regard to this matter.

Mr. HONEYMAN: I don't think he did.

Q. Were you present at the meetings in Michigan in April, 1910?

A. I must decline to answer that question on the same ground. 2

Q. Was any representative of the Colwell Lead Company present at any of those meetings?

Mr. NOBLE: You may decline to answer that question on the ground that it may tend to incriminate you.

THE WITNESS: I decline to answer that question on the ground that it may tend to incriminate me.

Q. Did you ever at any time or place have any conversation with any representative of the Colwell Lead Company on the subject of a license under the Arrott or any other patent? A. No, sir. 3

Q. Did you at any time have any agreement or understanding, express or implied, with the Colwell Lead Company, or with any agent or representative of the Colwell Lead Co. on the subject of the maintenance of prices? A. No.

Q. Or on any subject which might in any way tend to restrain trade or commerce at all? A. No, sir.

Mr. HONEYMAN: That is all, with the exception of reserving my right to compel the witness to answer.

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR THE WITNESS.

BY Mr. NOBLE: 4

Q. How many years have you been in the sanitary enameled iron ware business? A. Since 1878.

Q. Are you here under a subpœna? A. I am.

Q. Do you know at whose request it was issued?

A. I really do not.

Q. Have you a copy if it with you? A. No, sir; I have not.

Q. Where did you leave it, at your office?

A. That is where it was served on me.

1 Q. Mr. Myler, are you one of the defendants in this suit, which is brought against the Standard Sanitary Manufacturing Company, and others, in the Circuit Court of the United States for the District of Maryland?

A. I understand that I am.

Q. Are you also one of the defendants who were indicted in Detroit? A. Yes, sir; I am.

Q. It has been stated here by counsel for the Government that the subject-matter and the matters, transactions and things complained of as illegal in the civil suit and in the indictments found on or about December 7, 1910, in Detroit,
2 are the same. Do you understand that to be the fact?

A. Yes, sir.

Q. Did you make an answer in the civil suit filed in the Circuit Court in Baltimore? A. Yes, sir.

Q. And was that made pursuant to a subpœna in that case? A. Yes, sir.

Q. Did you verify that answer? A. I did.

Q. Will you please tell me the date upon which you verified it? A. The 1st day of October, 1910.

Q. Was that answer filed in Baltimore or did you direct that it be filed in your defense?

3 A. Yes, sir; I understood that it would be.

Q. Was what you said in that answer true at that time?

A. It certainly was.

Q. And is it true today? A. Yes, sir; it is.

Q. The Government has alleged, Mr. Myler, that you, the Standard Sanitary Manufacturing Company, and various other defendants, named in the suit in the Circuit Court for the District of Maryland, agreed upon a uniform method of selling your products in sanitary enameled iron ware to jobbers. Now, I ask you whether the Standard Sanitary Manufacturing Company ever agreed with any other manufacturer,
4 or whether you individually or any of the officers of the Standard Company, within your knowledge, ever agreed with any other manufacturers to maintain prices or to restrict output except in the license from Mr. Wayman?

THE WITNESS: That answer might incriminate me as well as the others, and I decline to answer.

Q. The agreement to which I referred as the agreement with Mr. Wayman, was the agreement shown in Petitioner's Exhibit No. 9 and known as the "License Agreement"

and that shown in Petitioner's Exhibit No. 11 and known as the "Jobber's License Agreement." Now, I ask you if you or the Standard Sanitary Manufacturing Company ever made any other agreements than ones similar to those, relative to prices upon sanitary enameled iron ware, or which embodied any terms in respect thereto? A. No, sir; I did not. 1

Q. Now, the Government alleges that the Standard Sanitary Manufacturing Company, you and all the other defendants named in this petition agreed with each other and among yourselves that the Standard Sanitary Manufacturing Company, the L. Wolff Company and the J. L. Mott Company should assign certain patents over to Mr. Wayman for a short term and subject to reassignment on the payment of a nominal consideration, so that Mr. Wayman, as an "ostensible licensor" might license the various manufacturers under those patents. Will you please tell me whether, for you or for the Standard Sanitary Manufacturing Company, you ever had such an agreement with other manufacturers? 2

A. None.

Q. Is there any truth in that statement as to you and the Standard Sanitary Manufacturing Company?

A. None whatever.

Q. Now, the Government alleges various things in its bill, but the ones I am asking you about are the principal ones, as I conceive it, that before the assignments of these patents, which I have mentioned, were made, all of the defendants—that means you, all of the officers of the Standard Sanitary Manufacturing Company and all the other manufacturing companies, and their officers—had made an agreement among themselves upon all the essential features of the license, calling it a licensing arrangement? 3

A. That is untrue.

Q. Is there any truth in that statement? A. No, sir.

Q. They say further that you and the other manufacturers had determined upon all the principal terms and conditions of the contracts to be entered into by Wayman, whom they say was an "ostensible licensor" merely with the other manufacturers. Is there any truth in that statement? 4

A. I don't think there is, sir.

Q. Is there any truth in it so far as you are concerned or know? A. No, sir; not so far as I know.

Q. Testifying, then, for yourself, what have you to say?

A. There is no truth in it.

1 Q. If the Standard Sanitary Manufacturing Company had been a party to any such agreement as that, wouldn't you have known about it? A. I should have.

Q. You are a member of the Board of Directors?

A. Yes, sir.

Q. And of the executive committee? A. Yes, sir.

Q. And Secretary and Treasurer? A. Yes, sir.

Q. And come in daily contact with the other officers of the company? A. Yes, sir.

Q. Well, was any such thought suggested? A. No, sir.

Q. The Government alleges similarly that the prices at
2 which goods should be sold, and the resale prices at which they should be sold by the jobbers to the plumbers were agreed upon by the manufacturers, that is by you and the Standard Sanitary Manufacturing Company and the other companies before these assignments were made. Is there any truth in that statement? A. Not a word.

Q. Was there ever any agreement, as far as you know, between the Standard Sanitary Manufacturing Company or any of its officers and these other manufacturers or their officers, to maintain prices on sanitary enameled iron ware goods?

3 THE WITNESS: As manufacturers?

Mr. NOBLE: Yes, that is, to have a price list, an agreement between the manufacturers?

A. No, sir.

Q. Now, they make a resume here and say: "This price list, arrived at by agreement and consultation between the defendants and without competition between them, fixes the price which every user of sanitary enameled iron ware must pay," etc. Now, I ask you did you agree with these other manufacturers upon the prices that are set out in that price
4 list? A. No, sir.

Q. So far as you knew, did the Standard Sanitary Manufacturing Company or any of its officers?

A. They did not, to my knowledge.

Q. And as far as you know, was there any such agreement between the rest of the manufacturers?

A. No, sir; I knew of the arrangement after it was published, because I was not consulted; I was told that was Mr. Wayman's business, not mine.

Q. From whom did you first hear of this license which

Wayman subsequently embodied into the form of Petitioner's Exhibits Nos. 9 and 11, called the "License Agreement" and the "Jobber's License Agreement?" 1

A. I presume through Mr. Torrance.

Q. Did Mr. Wayman subsequently say anything to you about it? A. No, sir.

Q. Now, there have been questions asked you here about various meetings of the manufacturers. I would like to know whether you attended the meeting at Mt. Clemens?

A. I must decline to answer that on the ground that it may tend to incriminate me.

Mr. NOBLE: I desire to give notice that I wish to continue the examination of this witness at such time as I can do so and examine him fully and freely with respect to all the issues and the evidence which has been given in this case, without fear on his part that the transactions, matters and things concerning which I may ask him questions, and which are also the matters and things and transactions laid in the indictments found in Detroit about December 7th, 1910, can be inquired into freely. The statement of counsel for the Government and the privilege claimed by the witness make it impossible for me to fully set out the defense of this witness and of the Standard Sanitary Manufacturing Company, with which he is connected, as can be done by examining him freely with respect to all the matters, transactions and things concerning which evidence has been given or may be given in this suit. It is unfair that this witness should not have an opportunity to defend his rights freely and fully, and that position is brought about by the Government insisting upon the testimony in this case being closed previous to the disposition of the cases in Detroit. Further, if this witness at a subsequent time, shall be ordered to answer by the Court I will desire to continue his examination at that time. 2 3 4

Mr. GROSVENOR: The witness is the client of counsel who has just spoken and counsel for the Government will be perfectly willing to attend any hearing at any time, night or day, within the time which his counsel has to complete his case under the order of the Court.

1 Q. If the Standard Sanitary Manufacturing Company had been a party to any such agreement as that, wouldn't you have known about it? A. I should have.

Q. You are a member of the Board of Directors?

A. Yes, sir.

Q. And of the executive committee? A. Yes, sir.

Q. And Secretary and Treasurer? A. Yes, sir.

Q. And come in daily contact with the other officers of the company? A. Yes, sir.

Q. Well, was any such thought suggested? A. No, sir.

Q. The Government alleges similarly that the prices at
2 which goods should be sold, and the resale prices at which they should be sold by the jobbers to the plumbers were agreed upon by the manufacturers, that is by you and the Standard Sanitary Manufacturing Company and the other companies before these assignments were made. Is there any truth in that statement? A. Not a word.

Q. Was there ever any agreement, as far as you know, between the Standard Sanitary Manufacturing Company or any of its officers and these other manufacturers or their officers, to maintain prices on sanitary enameled iron ware goods?

3 THE WITNESS: As manufacturers?

MR. NOBLE: Yes, that is, to have a price list, an agreement between the manufacturers?

A. No, sir.

Q. Now, they make a resume here and say: "This price list, arrived at by agreement and consultation between the defendants and without competition between them, fixes the price which every user of sanitary enameled iron ware must pay," etc. Now, I ask you did you agree with these other manufacturers upon the prices that are set out in that price
4 list? A. No, sir.

Q. So far as you know, did the Standard Sanitary Manufacturing Company or any of its officers?

A. They did not, to my knowledge.

Q. And as far as you know, was there any such agreement between the rest of the manufacturers?

A. No, sir; I knew of the arrangement after it was published, because I was not consulted; I was told that was Mr. Wayman's business, not mine.

Q. From whom did you first hear of this license which

Wayman subsequently embodied into the form of Petitioner's Exhibits Nos. 9 and 11, called the "License Agreement" and the "Jobber's License Agreement?" 1

A. I presume through Mr. Torrance.

Q. Did Mr. Wayman subsequently say anything to you about it? A. No, sir.

Q. Now, there have been questions asked you here about various meetings of the manufacturers. I would like to know whether you attended the meeting at Mt. Clemens?

A. I must decline to answer that on the ground that it may tend to incriminate me.

Mr. NOBLE: I desire to give notice that I wish to 2 continue the examination of this witness at such time as I can do so and examine him fully and freely with respect to all the issues and the evidence which has been given in this case, without fear on his part that the transactions, matters and things concerning which I may ask him questions, and which are also the matters and things and transactions laid in the indictments found in Detroit about December 7th, 1910, can be inquired into freely. The statement of counsel for the Government and the privilege claimed by the witness make it impossible for me to fully set out the defense 3 of this witness and of the Standard Sanitary Manufacturing Company, with which he is connected, as can be done by examining him freely with respect to all the matters, transactions and things concerning which evidence has been given or may be given in this suit. It is unfair that this witness should not have an opportunity to defend his rights freely and fully, and that position is brought about by the Government insisting upon the testimony in this case being closed previous to the disposition of the cases in Detroit. Further, if this witness at a subsequent time, shall 4 be ordered to answer by the Court I will desire to continue his examination at that time.

Mr. GROSVENOR: The witness is the client of counsel who has just spoken and counsel for the Government will be perfectly willing to attend any hearing at any time, night or day, within the time which his counsel has to complete his case under the order of the Court.

1 Mr. HONEYMAN: The Colwell Lead Co. has no objection to Mr. Noble calling this witness as a witness on his behalf at any time that he sees fit. This witness was brought here at the expense of the Colwell Lead Company. We do not expect to bring the witnesses back for further examination by Mr. Noble, but only if the Court orders him to answer these questions.

Mr. GROSVENOR: I suppose Mr. Noble can produce his witnesses at any time that he sees fit.

CROSS EXAMINATION BY Mr. GROSVENOR:

2 Q. Mr. Myler, you are not engaged in the selling end of the business, are you?

A. Yes and no. Mr. Torrance has charge of the sales of our business, and I am called in to consult with him quite frequently.

Q. Your main business is that of treasurer of the company? A. Secretary and treasurer; yes, sir.

Q. You do not fix the terms upon which the goods are sold to your customers? A. Yes, I do.

Q. Who told you that it was Wayman's business—you said on your examination by Mr. Noble that when this matter
3 was first brought to your attention and you objected to it some one said to you: "Well, that is Wayman's business." Who said that to you?

A. That was after the agreement had been signed and the prices had been published by Mr. Wayman. It was some time after that, when I got into some of the questions, that I objected to some of the arrangements and some of the prices.

Q. That was the first time you heard of it? A. Yes, sir.

Q. Now, who was it told you this? A. Mr. Torrance.

RE-DIRECT EXAMINATION BY Mr. NOBLE:

4 Q. In reply to a question by counsel for the Government, Mr. Grosvenor, when you said that that was the first time you heard of "it", to what did you refer? A. The price list.

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. What were the features that you objected to?

A. Some of the freight arrangements and some of the prices in some of the territories.

Q. Those were the only features that you found objectionable? A. Yes, sir. 1

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

EDWIN L. DAWES, a witness heretofore produced and sworn on behalf of the Colwell Lead Company, recalled for further examination, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Dawes, what became of your correspondence with the Colwell Lead Company which you had in your files? 2

A. All has been passed over to counsel, sir, as far as I know.

Q. Have you made an examination for it lately?

A. Made searches for it in the last week.

Q. And so far as your letters to the Colwell Lead Company and your letters received from them are concerned, you have turned all of them over to your counsel? A. Yes, sir.

Q. You have no recollection of turning those particular letters over to counsel, have you? A. No, sir.

Q. Just generally—

A. (Interrupting): Just turning over all correspondence pertaining to the subject. 3

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR WITNESS:

BY Mr. NOBLE:

Q. Did you attend the meeting which took place on the 29th and 30th of March at the Hotel Astor, in 1910?

A. I will have to decline to answer that question for fear that it might tend to incriminate me in the criminal proceedings.

Mr. NOBLE: I give the same notice as to this witness as I gave as to the others. 4

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Before you just went on the stand did counsel tell you that he would ask you that question if you took the stand.

Mr. NOBLE: I object to any such question.

GOVERNOR LYON: Don't answer the question; it is impertinent.

THE WITNESS: I decline to answer.

Q. I mean by counsel, did Mr. Noble tell you that he would ask you that question if you would take the stand?

Mr. NOBLE: I object to the question as impertinent. There is no occasion for the witness to tell what took place between him and counsel.

THE WITNESS: I decline to answer.

Q. You were sitting over there (indicating) and Mr. Noble said certain things to you and then Mr. Honeyman called you and asked you certain questions, and then Mr. Noble asked you that question.

Mr. HONEYMAN: Mr. Honeyman called the witness to locate certain correspondence and furnish a basis for secondary proof.

Mr. GROSVENOR: Will you read the question?

The stenographer then read the last question.

THE WITNESS: I decline to make any reply to you.

Q. Did your personal counsel, Ex-Gov. Lyon, state that question would be addressed to you if you were put on the stand?

A. I decline to make any reply.

Mr. GROSVENOR: That is all.

Examination concluded and signing of deposition waived by agreement of counsel for respective parties.

Mr. NOBLE: I would now like to take an adjournment until 10:30 tomorrow morning.

Mr. GROSVENOR: All right.

At this point the taking of evidence was adjourned until the following morning at 10:30 o'clock, at the same place.

Volume IV.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 988.

STANDARD SANITARY MANUFACTURING COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

TESTIMONY FOR DEFENDANTS AND EXHIBITS.

FILED FEBRUARY 16, 1912.

(23,064)

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY AND OTHERS.

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IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Pittsburgh, Pa., Post Office Building,

April 18, 1911.

Pursuant to adjournment, the taking of evidence on behalf of the defendant, the Colwell Lead Company, was resumed at 10:30 o'clock A. M., at the same place, before C. John Beeuwkes.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
ROBERT B. HONEYMAN, Esq.,
on behalf of the Colwell Lead Company.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Standard Sanitary Mfg. Co., *et al.*
RUSSELL T. MACFALL, Esq.,
on behalf of the Union Sanitary Mfg. Co., L. C. Huesmann and E. V. Brigham.
EX-GOVERNOR WALTER LYON,
on behalf of Mr. Dawes and Mr. Myler.

JOHN E. WRIGHT, a witness of competent age, produced on behalf of the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

Mr. GROSVENOR: Mr. Wright, before they begin to examine you, I believe you were here the greater part of yesterday, and it may not be necessary for me to make the same remarks to you that I made to the other defendants—

Mr. HONEYMAN: May I interrupt to say that I want to object to the counsel for the Government interfering with witnesses called for the Colwell Lead Company. It seems to me that these witnesses are of age and are represented by counsel, and are able to take care of their own affairs. It is not proper for counsel for the Government to interfere in the examination. His actions interfere with my getting testimony to support my defense.

Mr. NOBLE: I desire to note my objection to counsel for the Government stating to the witnesses called here, and whom I expect to examine in their own defense, such things as he has heretofore stated, on the ground that he is intimidating the witnesses and making them feel that it is impossible for them to tell the entire facts in this case so that their defense may be complete for fear their testimony may tend to incriminate them.

Mr. GROSVENOR: I was interrupted before I had finished. You understand that you are not called by the Government, and the Government makes no promise of immunity to you for your testimony in this case.

THE WITNESS: I understand that.

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. Mr. Wright, what is your business?

A. Manufacturer of sanitary enameled ware.

Q. That is, enameled iron ware? A. Enameled iron.

Q. What is the name of your company?

A. The present name is the Wheeling Sanitary Manufacturing Company.

Q. Did that company succeed to the business formerly conducted by the Wheeling Enameled Iron Company?

A. No, it is twice removed from the Wheeling Enameled Iron Company. It succeeded to the business of the American Sanitary Manufacturing Company, which in turn succeeded to the Wheeling Sanitary Manufacturing Company.

Q. What is your position with that company?

A. President and General Manager.

Q. How long have you been connected with the business?

A. I have been connected with it a little better than three years.

Q. What was your business before that?

A. I was in the iron and steel business prior to that time. 1

Q. You are familiar with the general matters affecting the enameled iron ware business at the present time?

A. Well, to an extent, yes.

Q. Do you know the Colwell Lead Company?

A. Yes, sir; know of them.

Q. How long have you known of them?

A. I would say two years, about.

Q. Do you know of them as manufacturers of enameled iron ware? A. Yes, sir.

Q. What do you know in a general way about their business? 2

A. I know that they are jobbers and manufacturers, jobbers in plumbers' supplies.

Q. Have they bought enameled iron ware from you?

A. No, sir; they have bought other goods from us.

Q. Do you know whether or not they do buy enameled iron ware?

A. No, sir; I couldn't say of my personal knowledge.

Q. Do you know whether the Colwell Lead Company sell to plumbers or to the jobbing trade?

A. It is my understanding that they confine their sales to plumbers. 3

Q. Do you know whether they sell generally throughout the United States, or is it only local?

A. I think it is only local, since we never come in competition with them.

Q. Did you ever hear of their having agencies for selling enameled iron ware throughout the United States?

A. No, sir.

Q. Have you run up against them in competition in New York City? A. No, sir.

Q. You do not sell to plumbers in New York City yourself? 4

A. We confine ourselves to the jobbing trade exclusively.

Q. Are you familiar with the Arrott patent?

A. Yes, sir.

Q. Did you ever discuss or talk with anyone concerning uniform licenses under the Arrott patent with Wayman?

A. Uniform—

Mr. HONEYMAN: Just read him the question.

Stenographer then read the last question.

1 A. Not that I recall.

Q. Did you ever discuss with Dr. Duryea, Mr. B. O. Tilden, or any representative of the Colwell Lead Company, the subject of any uniform licenses under the Arrott patent or any other patents used for the manufacture of sanitary enameled iron ware? A. No.

Q. Did you ever have any conversations or communications of any kind, character, or description with any representative of the Colwell Lead Company or any officer of the Colwell Lead Company concerning the maintenance of prices on enameled iron ware?

2 THE WITNESS: Concerning what?

Mr. HONEYMAN: The maintenance of prices?

A. No, sir.

Q. Or concerning any resale agreements or anything of that sort? A. No, sir.

Q. Did you ever have any communications with any representative of the Colwell Lead Company, or any member of the Colwell Lead Company which in any way could be understood to be in restraint of trade? A. No, sir.

EXAMINATION BY Mr. NOBLE OF COUNSEL FOR THE WITNESS.

3 BY Mr. NOBLE:

Q. Are you here under a subpœna? A. Yes, sir.

Q. At whose request was that subpœna served, or on whose behalf? A. The Colwell Lead Co., I presume.

Q. Mr. Wright, I want to ask you generally about Mr. Franzheim's connection with the Wheeling Enameled Iron Company and its two successor companies. What was his relationship to the Wheeling Enameled Iron Company?

A. He was secretary.

Q. Was he a member of the Board of Directors?

4 A. No, sir.

Q. Did he have anything to do with the direction of the company's business, or was his position ministerial or that of a clerk or employee?

A. He carried out the instructions laid down by me. In reality he was not anything more than a clerk.

Q. There were some letters sent out to the trade relative to the license agreement or the papers here referred to as the "License Agreement" and "Jobber's License Agreement"

similar to Petitioner's Exhibits 9 and 11. Were those sent out by his own volition or under direction? 1

A. Under direction.

Q. And who gave him the directions? A. I did.

Q. Now, what was his relationship to the company which succeeded the Wheeling Enameled Iron Company?

A. The same, the secretary.

Q. Was he a member of the Board of Directors of that company? A. No, sir.

Q. And anything he may have done with the so-called license or jobber's agreement there, will you state the circumstances under which those things were done? 2

A. The conditions were the same as obtained with the Wheeling Enameled Iron Company.

Q. Now, the present company, known as the—

A. The Wheeling Sanitary Manufacturing Company.

Q. Has he ever been connected with that?

A. Not in an official capacity.

Q. Was the matter of the license agreement or the jobber's license agreement here referred to ever brought to the attention of the Board of Directors of the Wheeling Enameled Iron Company or any of these companies? A. No, sir.

Q. Did you consult with Mr. Franzheim at the time you were discussing this question of a license from Mr. Wayman? 3

A. After we accepted the license I made known to him the conditions under which the agreement was signed. Beyond that he had nothing to do with the thing at all.

Q. And he had nothing to do with your accepting the license? A. Absolutely no.

Q. Mr. Wright, did you and your company make an Answer in the civil suit filed in the United States Circuit Court at Baltimore?

A. We made an answer, but as to the filing, I presume you did the filing.

4

Q. When the answer was made you directed counsel to attend to it for you? A. Yes, sir.

Q. Did you verify that answer? A. Yes, sir.

Q. Swear to it? A. Yes, sir.

Q. Will you please state the date upon which you swore to it? A. The 1st day of October, 1910.

Q. Was what you swore to in that answer true at the time? A. It was.

Q. And is it true now? A. Yes, sir.

1 Q. Were you, or was your company, a member of the Sanitary Enameled Ware Association of which Mr. Wayman was at one time commissioner? A. Yes, sir.

Q. Did that association or any of its members have anything to do or did it bring about the licenses which Mr. Wayman granted to you and to other manufacturers under the Arrott and other patents?

A. Speaking for our own company, no.

Q. Speaking for yourself, as well as your own company, that is true? A. Yes, sir; we had nothing to do with it.

Q. When did you first hear of the licenses which were
2 subsequently granted, or of the plan of Mr. Wayman to grant the licenses? A. I think the latter part of February, 1910.

Q. From whom did you first hear of the matter?

A. Mr. Wayman?

Q. Had you ever heard the subject discussed by any manufacturer of sanitary enameled iron ware prior to the talk that you mentioned as having with Mr. Wayman in the latter part of February? A. No, sir.

Q. As far as you and your company are concerned, this plan was entirely whose? A. Mr. Wayman's.

Q. You said you have been connected with the enameled
3 iron ware business and the Wheeling Enameled Iron Company and its successors for about three years?

A. A little longer than three years.

Q. Have you or your Company ever had any understanding with any other manufacturers of sanitary enameled iron ware to maintain prices? A. No, sir.

Q. Have you ever had any understanding or agreement to restrict the output of your factory or their factories?

A. No, sir.

Q. Now, the Government alleges in its petition that all these defendants, which would include you and your com-
4 pany, agreed with the other defendants to bring about an assignment of the Arrott, the Dithridge and the Lindsay patents from the Standard, the Mott and the Wolff Companies to Mr. Wayman. Is that statement true so far as you and your company are concerned?

A. Insofar as we are concerned, that is the Wheeling Enameled Iron Company and myself, it is not.

Q. Did you ever hear anybody suggest such an idea?

A. I did not.

Q. Did any other manufacturer ever discuss such a plan with you? A. No, sir. 1

Q. When Mr. Wayman first spoke to you about this matter, did he tell you anything about these patents?

A. He told me he had secured an option on those particular patents, and he outlined briefly what he purposed doing.

Q. Thereafter your Company received a license from Mr. Wayman, did it? A. Yes, sir.

Q. On substantially the lines, was it, which he outlined to you at that interview? A. Yes, sir.

Q. Did you ever have any agreement with other manufacturers at any time as to the manner in which you would sell your product? A. No, sir. 2

Q. You sold your product to such jobbers as you saw fit to trade with? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And that is true for all times since you have been in the business? A. Yes, sir.

Q. Now, the Government alleges that before the assignments of the patents which I have mentioned, namely, the Arrott, the Ditheridge and the Lindsay patents, were made to Mr. Wayman, that the defendants had agreed—that is these manufacturers, including you and the other manufacturers, defendants in this equity suit—had agreed upon all the essential features of what they call the licensing agreement. Is that true so far as you and your company are concerned? A. No. 3

Q. Is there any truth in it at all so far as you and your company are concerned? A. No, sir.

Q. Did you ever hear any other manufacturer discuss the matter or say anything that would indicate that there was any truth in that statement? A. No, sir.

Q. They allege also that likewise the defendants had agreed upon the principal terms and conditions of the contracts to be entered into by the manufacturers with Wayman, who was an "ostensible licensor." Now, I ask you, so far as you and your company are concerned, did you have any understanding or agreement whereby Mr. Wayman was to be an "ostensible licensor," or a person not in fact dealing with you as he purported to deal, that is, not the real owner of these patents? 4

A. He was the owner, so far as we knew, of these patents. He told me he owned the patents.

1 Q. Had you agreed with the other manufacturers upon the principal terms and conditions of the license agreement?

A. We had no agreement with any other manufacturer.

Q. Did you ever hear any other manufacturer say that he had or suggest that he had? A. No, sir.

Q. They further say that you and the other manufacturers had agreed upon the price list, that is upon the price at which sanitary enameled iron ware, goods should be sold, the terms and conditions under which it should be sold, and so on. Did you have anything to do with that?

A. We had nothing to do with establishing the prices.

2 Q. And you had no such agreement with any other manufacturer? A. No, sir.

Q. And so far as you and your company are concerned, is there any truth in that statement? A. No, sir.

Q. Now, they say that you and the other manufacturers had, by agreement and consultation between yourselves fixed the prices so that every user would have to pay a uniform price. Is that true so far as you are concerned?

A. No, sir; we had nothing to do with the establishing of the prices.

Q. So far as you were concerned, those prices were fixed

3 by whom? A. Mr. Wayman.

Q. Now, they say that you and these other defendants were engaged in a price fixing plan designed to eliminate all rivalry between you. Were you a party to any such plan as that? A. We had nothing to do with any such thing.

Q. So far as you know did any such plan exist? A. No.

Q. Did your company install and use the Arrott patent after Mr. Wayman granted your company a license?

A. Yes, sir.

Q. I asked you, did I not, if you had any agreement with any other manufacturers in regard to the assignment of these

4 patents to Wayman? A. I don't recall the question.

Q. Well, did you have any agreement or understanding with any other manufacturer, the purpose of which was to cause the assignment of these patents to Wayman?

A. No, sir.

Q. Have you been in the State of Michigan in the last three or four years? A. No, sir.

Q. Mr. Wright, in view of what counsel for the Government, Mr. Grosvenor, said to you when you took the witness stand, would you be willing to answer questions fully and

freely concerning matters which are alleged in the indictments in Detroit and in this petition here as being unlawful and constituting a crime under the statute? A. I would. 1

Q. Of course, it is my duty to tell you before I commence to ask you any of those questions, that some of those things might incriminate you or tend to incriminate you. Now as to those questions, I want to know if you would be willing to go into them or not?

Mr. GROSVENOR: Counsel for the Government suggests that this is a very remarkable way of presenting to the witness his constitutional privilege, and objects to this line of questioning. 2

Mr. NOBLE: I don't want to do anything that might tend to incriminate you.

THE WITNESS: I don't want to do anything tending to incriminate myself.

Mr. NOBLE: Well, you have a right to refuse to answer under your privilege, under the law, which Mr. Grosvenor stated to you.

THE WITNESS: Well, I would decline to answer that last question.

Mr. NOBLE: That is all.

CROSS EXAMINATION BY Mr. GROSVENOR: 3

Q. Mr. Wright, where were you subpœnaed to attend this hearing? A. In this building.

Q. In this building? A. Yes, sir.

Q. Where? A. Right out in the lobby there (indicating).

Q. Out in the corridor? A. Yes, sir.

Q. How did you happen to be in the corridor?

A. I came here in response to a telegram which I received.

Q. You came to Pittsburgh in response to a telegram?

A. Yes, sir.

Q. From your counsel? A. Yes, sir. 4

Q. Noble, Jackson & Hubbard? A. Yes, sir.

Q. When did you receive that telegram?

A. Friday evening, by telephone.

Q. Have you that telegram with you? A. No, sir.

Q. That said to come to Pittsburgh? A. Yes, sir.

Q. Well, how did you happen to come to the Federal Building?

A. That was in accordance with instructions, I think, with the message.

Q. Did you know that you were going to be put on the stand as a witness?

A. I did not know positively that that would be the case.

Q. But you thought it might be the case? A. Yes, sir.

Q. And you came for that reason? A. Yes.

Q. Upon the receipt of the telegram? A. Yes, sir.

Q. You testified, Mr. Wright, that you had no agreement with other manufacturers respecting prices. That was stated in your examination by Mr. Noble. Is that right?

A. That is a fact.

Q. As a matter of fact, you knew, did you not, at the time you were discussing with Wayman the entering into of a license agreement with him, that the other manufacturers in your line of business were also negotiating with him for the purpose of entering into agreements also?

A. I understood that, but not all of them?

A. The larger part of them?

A. Well, I don't know how many.

Q. And you understood that the same agreements which you were signing were being signed by the others?

Mr. NOBLE: I object to that question. There is no testimony as to the witness signing these agreements. I call the witness' attention to the fact that there is no proof in this case that he signed any agreement. Therefore, it is not proper cross examination. Secondly, I instruct the witness not to answer that question, involving as it does more than is apparent on the face of the question, on the ground that it might tend to incriminate him, and I advise him that he may take advantage of his privilege.

Mr. GROSVENOR: Now, read the question, please.

Stenographer then read the last question.

Mr. GROSVENOR: Will you answer that question?

THE WITNESS: I decline to answer on the ground that it might tend to incriminate me.

Q. Who were the directors of the Wheeling Enameled Iron Company in May, 1910?

A. J. J. Holloway; W. A. Wheat; W. J. Mays; William F. Stifel.

Q. Were you a director? A Yes, sir.

Q. Were these other directors employees of the company?

A. No.

Q. Were they connected with the selling end or the manufacturing end of the company, or just stockholders? 1

A. Just stockholders.

Q. And you were the active head of the company?

A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. NOBLE:

Q. When you received this telegram telephoned to you as you have described, and when you came here, did you know that you were going to be called as a witness for the Colwell Lead Company? A. No, sir.

Q. You did not know that until you were subpœnaed? 2

A. No.

RE-CROSS EXAMINATION BY MR. GROSVENOR:

Q. When you came from Wheeling to Pittsburgh, however, you expected to be a witness, is that right?

A. Yes, sir.

RE-REDIRECT EXAMINATION BY MR. NOBLE:

Q. I had a talk with you, Mr. Wright, hadn't I some two or three weeks ago, and said that I probably would call you?

A. You did. 3

Examination Concluded; Signature Waived.

HERMAN M. HOELSCHER, a witness of competent age, produced on behalf of the Colwell Lead Company, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HONEYMAN:

Q. Mr. Hoelscher, what is your business?

MR. GROSVENOR: Mr. Hoelscher, before you answer any questions— 4

MR. HONEYMAN: I want to interrupt long enough to say that I do not think it is any part of the business of the Government, or of its representatives, to attempt to browbeat or intimidate my witnesses. The witnesses are all of age and have counsel and do not need advice from the counsel for the Government, and are not seeking it. They want to be let alone by the Government, as I understand it. I do not think it is

proper or decent for the Government to interfere with my proving my defense.

Mr. GROSVENOR: Have you anything to say, Mr. Noble?

Mr. NOBLE: In order to satisfy the counsel for the Government, I do object, and I object very strenuously to the remarks which I assume he is going to make to the witness, because they intimidate the witnesses, and prevent them, as defendants, from freely presenting their defenses and from fully testifying. The Government puts these witnesses and this defendant in an inequitable and unfair position by forcing—as it is doing—and hurrying with all the power that it can hurry, this case to a conclusion, at a time when it is impossible for these defendants to present their defense.

Mr. GROSVENOR: Mr. Hoelscher, I am not giving you any advice of any sort. I just want to tell you that anything you may say here that is material may be material in your Detroit suit, and for that reason you may refuse to answer any questions which may incriminate you in the Detroit suit, and what I particularly want to say is that the Government is not going to give you any immunity for any testimony that you give here, because you are not called as a witness for the Government. I want you to understand that in advance. You may rely on your constitutional privilege not to answer, but if you do answer you waive that privilege, subject yourself to cross examination and do not gain immunity.

Mr. HEATH: We object to the representative of the Government stating that the Government will not give immunity. The immunity flows from the statute. I want to call the stenographer's attention to the fact that he did not get my statement correct as to the other witness. I said "statute" and not "Government."

Mr. HONEYMAN: I think you said "statute" and Mr. Noble corrected you, and you then said "Government." I thought that I brought this witness here, but I see that all of you are interfering with my conducting this proceeding in my own way. That applies to all parties interfering with my examination. I want to

advise the witness that he is here under my subpœna, 1
at my instance, and I shall expect him to answer such questions as I put to him on behalf of the Colwell Lead Company, and if he does not answer my questions, I shall take steps to compel him to answer if necessary.

Q. Now what is your business?
A. Plumbing supplies.
Q. With what company?
A. The L. Wolff Manufacturing Company.
Q. Do you manufacture enameled iron ware?
A. Yes, sir. 2
Q. And other plumbing supplies? A. Yes, sir.
Q. How long have you been in that business?
A. Over twenty years.
Q. You are generally familiar with the trade and with the people who are engaged in that business?
A. Thoroughly so.
Q. Do you know the Colwell Lead Company?
A. Yes, sir.
Q. What do you know about their business?
A. I know they are engaged in business in New York City. 3
Q. Do you know what their business is in a general way?
A. I believe they are jobbers of plumbing supplies in New York City.
Q. That is all classes of plumbing supplies?
A. That is my impression.
Q. Do you know whether or not they sell enameled iron ware? A. I believe they do.
Q. Do you know whether or not they manufacture part of the enameled iron ware that they sell?
A. I think they do.
Q. Do you know whether or not they buy any portion of 4
the enameled iron ware that they sell? A. Yes, sir.
Q. That is your understanding? A. Yes, sir.
Q. You meet your competitors from time to time?
A. Yes, sir.
Q. And you make it your business to be posted about trade matters? A. Yes, sir.
Q. Do you know whether or not the Colwell Lead Company sell to jobbers? A. I do not; I don't think they do.

Q. If they did, would you know of it?

A. I think I would.

Q. Do you understand that they sell to plumbers?

A. I think they do.

Q. Is it your understanding that they sell to plumbers only?

A. Yes, sir, I understand they are jobbers and sell to plumbers or to the retail trade.

Q. Do you know where their business is done?

A. I believe in New York entirely.

Q. Do you know whether or not it is true that the Colwell Lead Company has agents throughout the United States and is engaged generally in selling enameled iron ware throughout the United States? A. I never heard that.

Q. If it was true, would you know of it? A. Yes, sir.

Q. Can you say, then, whether it is true or not?

A. I would say it is not true.

Q. Did you ever discuss with Dr. Duryea or Mr. Tilden or any representative or officer or agent of the Colwell Lead Company any scheme for the maintenance of prices?

A. No, sir.

Q. Did you ever discuss with the Colwell Lead Company, any officer or representative of the Colwell Lead Company any method or plan or thing, of any kind or description, which could by any possibility be construed as an agreement in restraint of trade? A. No, sir.

Q. Did you ever discuss with anyone connected with the Colwell Lead Company, directly or indirectly, any scheme for issuing uniform licenses under any patents?

A. No.

Q. You are familiar with what is known as the Arrott patent? A. Yes.

Q. Did you ever discuss with anybody any scheme for uniform licenses under the Arrott patent? A. No.

Mr. HONEYMAN: That is all.

EXAMINATION BY Mr. NOBLE, OF COUNSEL FOR WITNESS.

BY Mr. NOBLE:

Q. Mr. Hoelscher, were you subpœnaed to come here to testify this morning? A. Yes, sir.

Q. Did you receive a telegram from my firm last week

requesting you to come here for conferences and give testi- 1
mony?

A. A telegram was received at our office on Friday. I was at Mr. Wolff's home, as he was very ill, and he died that evening, and that message was telephoned to me. As I remember it, it said to come to Pittsburgh for conferences and remain a day or so to complete conferences.

Q. And didn't it say I had to complete the taking of testimony by the 28th—

A. Twenty-eighth or the twenty-second, I forget which.

Q. The 22nd; that is right. And, it was pursuant to that telegram that you came? A. Yes, sir. 2

Q. Had you any knowledge that you would be called by the Colwell Lead Company to give any testimony here?

A. None whatever.

Q. Has Mr. Ludwig Wolff, who was the President of the L. Wolff Company, and who was one of the defendants in this suit and who was indicted in Detroit, died recently?

A. He died Friday evening.

Mr. NOBLE: Mr. Grosvenor, I wanted to ask you this morning if you desired to have Mr. Fisher recalled for further cross examination?

Mr. GROSVENOR: No, I think not. 3

Mr. NOBLE: Then, we can note in the record that the Government waives any further cross examination of Mr. Charles A. Fisher, I think his name is.

Mr. GROSVENOR: Yes, the stenographer took the note.

BY MR. NOBLE:

Q. Mr. Hoelscher, are you one of the defendants in the suit of the United States of America against the Standard Sanitary Manufacturing Company and others filed in the Circuit Court for the District of Maryland? A. Yes. 4

Q. And were you subpœnaed in that suit to make answer?

A. Yes, sir.

Q. Did you make answer in that suit? A. I did.

Q. And did you direct that your answer be filed?

A. I did.

Q. Did you verify or swear to the answer which you made? A. I did.

Q. I show you a copy of the answer and ask you on what day you verified that answer?

1 A. The 30th day of September, 1910.

Q. And that answer you directed to be filed as your defense in that suit? A. Yes, sir.

Q. Was what you said and swore to in that answer true?

A. It was.

Q. And is it true today? A. Yes, it is.

Q. Was your company a member of what has been referred to here as the Sanitary Enameled Ware Association, of which Mr. Wayman was at one time Commissioner?

A. We were.

Q. Were you present at the meeting at which Mr. Way-
2 man was elected? A. I was present.

Q. Was there more than one candidate for that office?

A. Yes, there was.

Q. Do you recall the vote?

A. I believe, as near as I can remember that there were thirteen or fourteen or fifteen votes. I believe Mr. Wayman was elected by two majority, as near as I can remember that. I think it was about eight to six, or six to seven. I know there was a difference of about two votes.

Q. Who was the other applicant for the position?

A. There were two applicants to start with, other than
3 Mr. Wayman.

Q. Were there? A. Yes, shall I mention them.

Mr. NOBLE: Yes.

A. (Continuing): There was a Mr. Ainsworth, of Chicago, whom I thought was going to be elected secretary of the association, and then the other candidate was Mr. Charles E. Gates. Shall I tell the details of this?

Mr. NOBLE: No, just the candidates.

A. They were Mr. Ainsworth, Mr. Gates and Mr. Way-
4 man.

Q. And Mr. Wayman was elected? A. Yes, sir.

Q. By a divided vote, such as you have described?

A. By a divided vote, of course.

Q. This Sanitary Enameled Ware Association had been in existence under one name or another for a number of years, had it not? A. Yes, sir.

Q. Was there any agreement among the manufacturers, members of the Sanitary Enameled Ware Association, which

I mentioned, or any of them, whereby it was agreed that prices should be maintained? 1

A. There was no agreement as to prices whatever.

Q. Was there any agreement as to the restriction of output? A. No, sir; none whatever.

Q. Or as to restraint of trade in any way?

A. No, sir; none.

Q. Or to stifle competition?

A. No, sir; none, absolutely.

Q. Did the association have anything to do, or any of its members, with bringing about the licenses which Mr. Wayman proposed thereafter to issue to your company and to other companies? A. It did not. 2

Q. The licenses to which I refer are similar to Petitioner's Exhibits Nos. 9 and 11, known as the "License Agreement" and the "Jobber's License Agreement?"

A. I understand.

Q. From whom did you or the Wolff Company first hear of the question of taking a license under the Arrott and other patents? A. From Mr. Wayman.

Q. Did any other manufacturer or any other person connected with the enameled iron ware business propose the plan to you or to the Wolff Company?

A. No, sir; they did not. 3

Q. The proposition, so far as the Wolff Company is concerned, and so far as you are concerned, came from whom?

A. Entirely from Mr. Wayman.

Q. Now, the Government alleges that you and the other defendants in this case agreed upon a scheme or plan or understanding whereby the Arrott patent was to be assigned by the Standard Sanitary Manufacturing Company, the Ditheridge patent was to be assigned by the J. L. Mott Company and the Lindsay patent to be assigned by the L. Wolff Manufacturing Company for a nominal consideration and for a short period, subject to a reassignment on demand as a part of a plan or scheme to have Mr. Wayman license you under such patents. Were you or the Wolff Company parties to such a scheme? 4

A. There was no such scheme or agreement.

Q. Was there any scheme or arrangement of any description between you or the Wolff Company and Mr. Wayman except those expressed in the written instruments?

A. None at all.

1 Q. Do you recall when Mr. Wayman began to negotiate with your company for the purchase of the Lindsay patent, approximately? A. Early in 1910 some time.

Q. Now, the Government alleges that all these defendants agreed upon a plan whereby they would not sell to jobbers or would not sell their goods except upon uniform terms, uniform prices, or agreed upon terms and agreed upon prices. I want to know if there was any such agreement as that between yourself or the Wolff Company and any other manufacturer? A. No such agreement.

Q. At any time? A. No, sir, at no time whatever.

2 Q. Now, the defendants are charged in the Petition with having agreed among themselves upon all the essential features of what is denominated the "licensing arrangement" before the assignments were made. I ask you whether, as to the Wolff Company and yourself, that statement is true?

A. That statement is not true.

Q. Is there any truth in it as to your company and yourself? A. No, sir.

Q. You are one of the defendants in this action?

A. Yes, sir.

Q. And you are indicted in Detroit? A. Yes, sir.

3 Q. And the transactions, matters and things in both cases are the same, are they not? A. Exactly.

Q. So far as you know, did any other manufacturer of sanitary enameled iron ware have any such agreement as is there referred to? A. No, sir.

Q. Now, the Government says that the defendants—which includes you and the Wolff Company, and others—had determined upon the principal terms and conditions of the contracts to be entered into by the manufacturers with Mr. Wayman the "ostensible licensor" before these assignments. I want to ask you whether there is any fact that
4 you know of or have heard of from which it could possibly be inferred that Mr. Wayman was an "ostensible licensor?"

A. None whatever, sir.

Q. As far as the Wolff Company and yourself were concerned, the Lindsay patent was sold to him absolutely, was it or was it not? A. Absolutely.

Q. And he later granted to the Wolff Company a license under the Arrott as well as under the Ditheridge and Lindsay patents, did he not? A. Yes, sir; he did.

Q. Did you or your company have any agreement with

any of the manufacturers or any of the defendants relative to the assignment of these patents to Wayman? 1

A. We did not.

Q. Had you agreed with other manufacturers upon the terms and conditions, whether they are principal or minor of the contracts to be entered into, or which were entered into, between Wayman and the various manufacturers?

A. No.

Q. Now the Government alleges that the price list, or that a price list, was agreed upon among the defendants, containing the terms and prices and conditions under which sanitary enameled iron ware should be sold by the defendants throughout the United States, and fixing the resale prices, etc. I want to ask you whether you or the Wolff Company agreed with other defendants, or any of them, upon a price list or the price list which Mr. Wayman thereafter issued? A. We did not. 2

Q. As far as you are concerned, that price list was issued by whom? A. Mr. Wayman.

Q. Did you or the L. Wolff Manufacturing Company ever have any agreement or understanding or conversation whereby—or pursuant to which—Mr. Wayman was to undertake or to be employed to undertake to get control of the Arrott, the Lindsay and the Ditheridge or other patents and then give licenses to you or to other manufacturers? 3

A. We had no such agreement or understanding at all.

Q. Did you ever hear of any such agreement or understanding, or any facts which would suggest the existence of any such agreement or understanding? A. I did not.

Q. Now, Mr. Hoelscher, it is alleged in the indictments at Detroit, and evidence has been given in this suit, relative to some meetings of manufacturers which took place in Mt. Clemens, in the spring of 1910, as I remember, in the month of April. Were you present at any of those meetings? 4

THE WITNESS: I decline to answer that, as it might tend to incriminate me.

Q. I ask you now whether in view of what counsel for the Government said to you when you took the stand you would be willing at this time to testify fully and freely as to all the matters, transactions and things within your knowledge concerning the subject-matter of this suit and which are involved in the charges laid in the indictment in Detroit?

A. I think I could determine that better when the questions are asked me.

Q. What was done, if you know, at the alleged meetings which took place at Mt. Clemens?

A. I decline to answer that question, as it might tend to incriminate me.

Q. Do you know who was there at those alleged meetings?

A. I decline to answer that question for the same reason.

Mr. NOBLE: That is all.

Mr. GROSVENOR: I have no cross exmination.

Mr. HONEYMAN: The Colwell Lead Company desires to make the same statement—that is, counsel desires to make the same statement to the same effect that he made yesterday, that is that the Colwell Lead Company does not assume any responsibility for the defendants taking witnesses called by the counsel for the Colwell Lead Company and making them their own witnesses for the purpose of their cases. Counsel does not object to their doing so, but states that he has nothing to do with that proceeding and if it is done to facilitate the defense of the other defendants, we do not object, but we are not a party to that proceeding.

Examination concluded; and signing of deposition waived by agreement of counsel for the respective parties.

At this point a recess was taken at 11:50 A. M. until 2 o'clock P. M.

After Recess.

Mr. HONEYMAN: I understand that Mr. Ward, who was under subpœna, does not want to be sworn and testify, and I have no desire to do anything further at this time in such contingencies. I have not been able to get any of the other witnesses under subpœna, so for that reason I will not proceed further now as far as the Colwell Lead Company is concerned. Mr. Noble gave notice that he would present evidence at this time, but I have nothing to do with that.

Mr. GROSVENOR: Is this Mr. Ward the Mr. A. G. Ward who is one of the defendants?

Mr. HONEYMAN: Yes, I believe he is. But, I have not stopped to consider whether they were defendants or not, I have called them as my witnesses anyhow. I suppose if any of my witnesses should happen to come in later Mr. Grosvenor will not object to putting them on. 1

Mr. GROSVENOR: No, the Government is ready to proceed at any time during this week at any hour.

Mr. NOBLE: Counsel for the defendants announces that he has endeavored to get a number of witnesses here for today, and from telegrams and other messages which he received yesterday and before yesterday, he supposed that he would have some witnesses to go on with at this time. I have a number of telegrams, however, which show that four witnesses whom I have asked to come are now on the trains expecting to get here some time this afternoon, and a number of other witnesses expecting to arrive in the morning. I expect to take their testimony tomorrow. Likewise, when we get through here with the witnesses which I have called to come here, I intend to further examine other witnesses, and I may request the Examiner and counsel for the Government, unless unforeseen circumstances change my plans—I have in mind Judge Holland giving his decision—to go on and complete the examination of other witnesses later in New York, perhaps commencing Thursday there. If the witnesses whom I anticipate being here tomorrow are all here, I would like to sit late tomorrow afternoon until we get through. 2 3

THE EXAMINER: You have no witnesses available now.

Mr. NOBLE: Not now.

THE EXAMINER: And you do not anticipate any this afternoon? 4

Mr. NOBLE: Some will be here at 6, some at 8 and some at 9 tonight.

Mr. GROSVENOR: I understood you were going to examine Mr. Wayman. He is in the room.

Mr. NOBLE: I expect to put Mr. Wayman on as my last witness, and I do not desire to call him until I have gotten the testimony of the witnesses whom I am expecting.

Mr. GROSVENOR: Counsel for the Government is ready to go on at any time, either today or any other day this week, either here, in Pittsburgh, or any other place that counsel for the defendants may suggest.

THE EXAMINER: We will adjourn, then, until tomorrow. Can't we start earlier tomorrow?

Mr. NOBLE: Ten thirty is as convenient as any time to start.

THE EXAMINER: You do not think you can start earlier than that?

Mr. NOBLE: I have not seen the witnesses who are to come here, and until I have conferred with them, I am not prepared to say the exact minute that I can go ahead. I may be able to start at 6 o'clock in the morning, but I have not seen those witnesses and I must confer with them, and therefore I would like to have an adjournment taken until the usual time, 10:30 o'clock, which is the time at which we have always started before.

THE EXAMINER: Very well, then.

An adjournment was then taken until 10:30 o'clock the following morning.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

Pittsburgh, Pa., Post Office Building, 2

April 19, 1911.

Pursuant to adjournment, the taking of evidence on behalf of the defendants was resumed at 10:30 o'clock A. M., at the same place, before C. John Beenwkes, Special Examiner.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq., 3
on behalf of the Standard Sanitary Manufacturing Co., *et al.*
RUSSELL T. MACFALL, Esq.,
on behalf of the Union Sanitary Mfg. Co., L. C. Huesmann, and E. V. Brigham.
J. R. CAREY, Esq.,
on behalf of the National Sanitary Mfg. Co., Frank G. Borden, and D. W. Davis.

Mr. NOBLE: I had previously offered in evidence, and I now re-offer the certified copies of the Letters 4
Patent of the United States No. 633,941, issued Sept. 26, 1899, to James W. Arrott for a dredger for pulverulent material.

Mr. GROSVENOR: You already have that in.

Mr. NOBLE: Yes, you put the ordinary printed copy in, but this is a certified copy.

Letters Patent referred to were then marked and filed as "Defendant's Exhibit No. 10."

Mr. NOBLE: I now offer a certified copy of the opin-

ion of Judge Cross in the suit of the Standard Sanitary Manufacturing Co. *vs.* The J. L. Mott Iron Works, in The United States Circuit Court for the District of New Jersey, in which the Arrott Patent, No. 633941 is sustained.

Paper referred to was then marked and filed as "Defendants' Exhibit No. 11."

Mr. NOBLE: I now offer the decree in the same case, in which Judge Cross wrote the opinion sustaining the Arrott Patent, No. 633941, entered in the Circuit Court of the United States for the District of New Jersey, this being a certified copy of that decree, it being the final decree.

Paper referred to was then marked and filed as "Defendant's Exhibit No. 12."

Mr. NOBLE: I now offer in evidence a certified copy of the opinion of the Circuit Court of Appeals for the Third Circuit, in the same case, in which the opinion was delivered by Judges Dallas, Gray, and Buffington, who constituted the Court.

Paper referred to was then marked and filed as "Defendants' Exhibit No. 13."

Mr. GROSVENOR: Counsel for the Government objects to the opinions above mentioned, Defendants' Exhibits 10, 11, 12 and 13, except so far as they are introduced for the purpose of establishing that the Arrott patent had been in litigation and had been sustained by the Court. He objects to the introduction of the opinions to establish any of the facts stated in the opinions, the proof in this case being contrary to certain statements of fact contained in the opinions.

Mr. NOBLE: These exhibits are put in evidence by counsel for the defendants for all purposes.

I now desire to state on the record that Mr. Reid Carpenter is in court and Mr. S. N. Ford, of the Humphryes Manufacturing Co., both having been brought here by a telegram, a copy of which was put in evidence by the Government and marked "Petitioner's Exhibit No. 285," the copy having been sent to Mr. Weiskittel, to testify and offer their individual defenses as well as the defense of the Humphryes Manufacturing Company to the suit pending in the Circuit Court of the United States for the District of Maryland; but that owing to

the fact that the matters, transactions and things involved in this suit and laid in the indictments found in Detroit on or about the 7th of December, 1910, are the same, they are unwilling to go on the stand and testify fully and freely or at all as to the matters involved in this suit, owing to the pendency of the criminal cases referred to, for fear that the matters of which they might testify, or be called upon to testify, might tend to incriminate them. Accordingly, they desire at a time when they may so testify to have an opportunity of doing so. Their reasons are also because of the pendency, as I said, of this criminal action, and because of the warnings heretofore given to witnesses previously examined, who upon taking the stand have been warned by counsel to the Government in the manner in which the record will show. 1 2

Mr. GROSVENOR: Counsel for the Government objects to the statement of Mr. Noble as in any way being evidence or binding the Government as to what the desire and wishes of the two defendants named may be. It is evident that statements of counsel are not proof. If it be the fact that these defendants declined to take the stand for reasons stated by counsel for the defendants, his statement is not proper evidence of such action on their part, and the Government does not wish to be bound as agreeing to any of the statements made by Mr. Noble as to what may or may not be the purposes of these defendants. If they wish to claim their constitutional privilege, they cannot do so by a statement of counsel prior to their being placed on the stand. 3

Mr. NOBLE: Counsel for the witnesses does not ask the counsel for the Government to agree to any statement of fact made by Mr. Noble.

Mr. GROSVENOR: Well, counsel for the Government objects to the statement as being in any respect a statement of the facts or to be taken as such. 4

WILLIAM E. CLOW, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company, and others, defendants, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. What is your business?

A. Manufacturer of cast iron water pipe, dealers in plumbing goods.

Q. Where are you in business? A. Chicago.

Q. Do you deal in sanitary enameled iron ware?

A. We do.

Q. How long have you been engaged in that business?

A. About thirty-four years.

Q. What is the name of your Company?

A. James B. Clow & Sons.

Q. Is that a corporation? A. Yes, sir.

Q. Mr. Clow, did you or your Company receive a letter signed by Mr. Joseph Darling, Special Agent of the Bureau of Investigation, Department of Justice, making an inquiry as to whether your Company was forced to sign any jobber's license agreement or any license agreement in respect to the sanitary enameled iron ware business of the manufacturers of it? A. Yes, sir.

A. Yes, sir.

Q. Have you that letter with you? A. No, sir.

Q. Did your Company sign a jobber's license agreement?

A. Yes, sir.

Q. For what reason did you sign it?

A. Signed it with more pleasure than any agreement that we ever signed, because we believed that it was not only for the best interest of our concern, but of the manufacturer and of the purchaser from us and the user.

Q. Were you in any way forced to sign it?

A. No, sir; we were not. We were very thankful that there was any possibility of signing it, and make any such condition as was promised.

Q. Do you recall the approximate date of your signing that agreement? A. I am afraid I cannot recall.

Q. Was it about the 1st of June, 1910?

A. I am afraid I will have to ask you to excuse me on that. I don't remember.

Q. Will you tell me after you had signed that agreement whether there was any difficulty as to the ware or any improvement as to the ware which you purchased?

A. I think I can best answer that by saying that there was a very great improvement of the conditions of the sale of the ware. Enameled iron ware, prior to this arrangement, was purchased where we could buy it the cheapest, to a great extent. Every manufacturer was striving to make it as cheaply

as they could, with the result that there were a very great many returned seconds on the market. We sold them. They gave us a great deal of trouble. The cost of the enameled iron ware was not equal to the installation, and I signed the paper with a great deal of pleasure, because I realized that if there was a fixed price on the ware every manufacturer, instead of making ware cheaper, would make it better, and then back of that, the purchases from him would be based on quality, and what I thought was realized, that the ultimate cost to the consumer was less than before, because there were no seconds sold, and the ware we were getting was of the best that they could produce, consequently less claims for damages and no trouble with the plumber after he installed it. 1 2

Q. So, as I understand you, the customer got a better article and had less trouble and expense and annoyance in respect to having installed ware which proved defective?

A. There is no question whatever that under this agreement the customer received more for his money than he ever did before during the life of the enameled iron ware industry.

Q. With what companies, if you know, did your house sign jobber's license agreements?

A. I don't know. We signed but one agreement. We buy ware from very few concerns. 3

Q. You don't remember that detail?

A. No, our custom is to buy enameled ware from as few concerns as possible, because in the past there was so much trouble with it that we wanted to know whom the ware belonged to, so that we could put in the claim.

Q. Since the 1st of January, 1911, has there been any difference in the conditions of the trade as compared with the period from June 1st to January 1st, 1911?

A. Yes, sir; there is no pleasure in selling sanitary enameled ware, and no profit. In selling that ware to the plumber or customer we do not know if the guarantee is good for anything. We don't know what a guarantee means today. 4

Q. During the period from June, 1910, until December 31, 1910, did you know what a guarantee meant?

A. We knew what a guarantee meant and so did the plumber and so did the consumer, and when we got an article we knew the manufacturer was making the best that he could, because on the question of quality rested his trade.

1 CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Clow, who was this one company that you signed with?

Mr. NOBLE: I object to the question. The witness said that he did not remember that they signed more than one contract. He said they purchased from as few as possible.

Mr. GROSVENOR: What was the question?

The stenographer then read the last question.

A. If you will change that and ask me from whom we pur-
2 chased, I may be able to answer that. I only know we signed the agreement, and we were very glad of it.

Q. What company was the other contractor?

A. Well, I know one of them would be the Standard Sanitary Manufacturing Company.

Q. You signed with the Standard Sanitary Manufacturing Company?

A. That I don't know. If I had the document here I could tell you.

Q. With whom do you think you signed, then?

A. The Standard Company is one, surely.

3 Q. They are the largest sellers to you of enameled ware?

A. Yes, sir.

Q. You confined most of your purchases to the Standard Sanitary Manufacturing Company? A. Yes, sir.

Q. You have done so for a number of years?

A. No, there are years that we have gotten more from others than from the Standard.

Q. Your company has made a specialty in the last few years of the Nemo tub, which you bought from the Standard?

A. No.

Q. Haven't you bought that in lots of thousands from the
4 Standard?

A. Well, we bought others in thousands; that is not so much.

Mr. GROSVENOR: Answer the question, please.

THE WITNESS: I answered it.

Mr. GROSVENOR: Read the question, please.

Stenographer then read the last question.

THE WITNESS: When?

Mr. GROSVENOR: In the year 1909 and the early part of 1910?

A. We were buying a good many tubs in the early part of 1909? 1

Q. Nemos? A. Yes, sir, the non-guaranteed tub.

Q. That is the cheapest tub made, is it not, or one of them? A. Yes, sir, it was improperly named.

Q. What is your position with the company?

THE WITNESS: James B. Clow & Sons?

Mr. GROSVENOR: Yes.

A. President.

Q. What end of the business have you charge of, the whole business or the selling end? 2

A. Well, I have had entire charge of it for many years.

Q. Do you make any enameled iron ware? A. No, sir.

Q. You say that from June, 1910, to January, 1911, the conditions in the jobbing trade were good?

A. The conditions were improving constantly from June to the end of the resale term.

Q. In what respect were they improving? Were prices to the jobber improving?

THE WITNESS: I beg pardon.

Q. The jobber was making more money? 3

A. Yes, sir, because they had no trouble. Enameled iron ware is simply trouble,—doubled trouble. Every time you cheapen it you double up on your trouble.

Q. Did you observe the resale prices laid down by that contract in those six months? A. Yes, I did.

Q. Are those resale prices in force now?

A. No, I am sorry to say.

Q. Under the resale prices you made more than you did before June, 1910? A. Because—

Mr. GROSVENOR (interrupting): Answer yes or no.

A. (Continuing): No, I won't answer yes or no, because neither one will be just to you or to me. 4

Mr. NOBLE: The witness is instructed that he does not have to answer yes or no. He can answer to bring out the truth.

THE WITNESS: That is what I am here for. Yes or no does not tell the story.

Mr. GROSVENOR: That is what I want, the truth.

THE WITNESS: If you let me go on I will tell the truth. That is the only way you can get anything out of me.

Mr. GROSVENOR: Will you read the question?

Stenographer then read the question referred to.

A. Before 1910—

Q. (Interrupting): Before June, 1910?

A. Before June, 1910, the trouble with enameled iron ware made its handling a loss, irrespective of the price at which it was purchased or the price at which it was sold.

Mr. GROSVENOR: Read the question again, please.

The stenographer then read the question referred to.

THE WITNESS: Read my answer again.

The stenographer then read the answer referred to.

THE WITNESS: After the resale plan, the handling only of guaranteed goods made its sale profitable.

Q. Were the resale prices—by that I mean the prices to the plumber—under the resale plan as an average, higher than they were before the resale plan?

A. The selling price may have been higher under the resale plan, but the net cost to the consumer of the article delivered was less.

Q. What items are you referring to now in adding to the price which makes the cost less? A. Trouble.

Q. Trouble? A. Trouble.

Q. Outside of that, taking it from a pecuniary standpoint, I mean, just what is paid by the plumber to the jobber, did the plumber pay the jobber more under the resale prices than he has paid since the resale prices were abolished, just in money, I mean?

A. Money is all we are working for. We are not there for our health, and it is money that we are looking for in the article we sell, and the trouble that was found in the sale of enameled ware prior to this agreement was that the plumber did not pay us what we charged him, because he loaded us down with claims for ware that he claimed was imperfect, and I say to you now, as I tried to convey to you before, that under the resale plan we received more net money from our invoiced charge than we did before, because the element of trouble was eliminated and our bills were paid and the consumer received what he purchased.

Q. In other words, the contract system put in force regulated the sale, is that right? 1

Mr. NOBLE: I object to the phrase "the contract system." The witness is testifying as to what his company did.

THE WITNESS: Will you read the question?

The stenographer then read the last question.

Mr. GROSVENOR: If that is not clear I will try to make it clearer.

THE WITNESS: I wish you would, please.

BY Mr. GROSVENOR: 2

Q. I show you what is Government's Exhibit No. 133, being the price list known as the resale price list. You have seen that sort of a book before, I take it? A. Yes, sir.

Q. And that is the resale price list which the jobber observed in selling to the plumber under this license system, is that right? A. Yes, sir.

Q. This book contains a lot of conditions, for instance under "General Conditions," "Deliveries," etc., and then there are others among these first pages. These are the conditions which governed you in the sale to the plumber, is not that right, under the resale system? 3

A. They are the conditions with which we were very glad to comply.

Q. They are the conditions under which, gladly or unwillingly you sold to the plumbers? A. Yes, sir.

Q. But they are the conditions which you observed in your sales to the plumbers?

A. I again repeat, very gladly observed.

Q. Now, when you say that conditions were improved in your troubles with the plumbers and of the plumbers with you, you mean that the selling under this uniform arrangement brought the business to a stable condition, is that right? 4

A. Yes, sir.

Q. That is to say, Mr. Clow, most of the jobbers signed these contracts and sold under these price-lists following out this book? A. I am speaking for our company only.

Q. Have you any idea what per cent. of jobbers signed this contract with the Standard Sanitary Manufacturing Company?

A. I am not expressing ideas, only my knowledge.

1 Q. Can you state from your knowledge of the business?

A. I only will testify from what I know, and beyond that nothing.

Q. Was it your observation in the business that the majority of your competitors signed this contract with Wayman? A. I think they did, if you want a thought.

Q. You received a notice that in order to obtain sanitary enameled iron ware, it would be necessary for you to sign a contract.

Mr. NOBLE: One moment. There is no evidence in this case that such a notice was ever sent out. The
2 only evidence in this case respecting that was that Mr. Wayman stated certain things to manufacturers whom he had licensed under his patents.

Mr. GROSVENOR: Will you read the last question?

The stenographer then read the last question .

A. I don't remember the receipt of any such notice. The question of the plan was discussed, and its advantages were so apparent that there was never any question as to our signing it.

Q. Going back to this division of time, in which you were
3 comparing the periods from June, 1910, until the end of December, 1910, and the period subsequent to January 1st, 1911, from a jobber's point of view you state that the condition from June, 1910, until the end of the year 1910 was to be preferred to the period beginning January 1st, 1911?

A. To all time previous, I said—to all time ever since the first piece of enameled iron ware was made.

Q. And also preferable to the time since January 1st, 1911? A. Very much.

Q. During that period to which you refer, you sold to all your customers in accordance with the prices established
4 in this price list, is that right? A. I believe so.

Q. The price of any article named in this price list to the plumber was determined by a reference to its appropriate place in this book?

A. Well, that book undoubtedly determined our prices, but we did not sell from the book. We sold from our own discount sheets.

Q. I thought you observed these resale prices?

A. We did, but we sold from our own publication or book, which were undoubtedly based on that book.

Q. You used your own book for reference? A. Yes, sir. 1

Q. But that had been made up the same as this (indicating)? A. Undoubtedly.

Q. So that every plumber, no matter where he was located, if he was in one of these territories, paid the same as every other plumber? A. Yes, sir.

Q. And every jobber who had signed this contract would sell to the plumber in that territory at the same price?

A. Yes, sir.

Q. Because all the jobbers who had signed were using this one book? A. I don't know.

Q. How are prices since the break-up? 2

THE WITNESS: Will you permit me to swear?

Mr. GROSVENOR: Yes, certainly.

A. It's hell.

Q. There is now competition between the jobbers?

A. No, there is the most damnable stuff put on the market that was ever put on in the world. It costs the consumer more than he ever paid for ware, and it is not only hell, but it is condensed hell. There is no guarantee and there is all kinds of stuff put on the market that is called enameled iron ware. Everyone sells as he pleases, and there is no profit 3 or pleasure in selling it. And a very large proportion of the ware that is sold on the market today is a swindle on the consumer.

Q. This is true of conditions since January 1st, 1911?

A. Yes, sir.

Q. Now, do you know anything about this Arrott patent?

A. No, I don't know anything about enameled iron ware patents at all; I don't know anything about the manufacture; I don't want to make the stuff, I have trouble enough of my own.

Q. It is claimed here that this Arrott patent enables the 4 manufacturer to make a better article.

A. I wish to God they would all use it, then.

Q. The statement is that sixteen of these manufacturers have all used this Arrott patent since June 1st, 1910. How do you account for the fact that this poorer article has come to the fore since January, 1911, although the Arrott patent is being used?

A. For the same reason that the Germans determined that uncontrolled competition was destructive to a manu-

1 factured article. Now you have uncontrolled competition and they are making the stuff as cheaply as they can. All they want to do is to sell it, and a large proportion of the stuff now made is worse than worthless, because there is labor added in its installation.

Q. Can you name any of the manufacturers who are putting the poorer article on the market since January 1st, 1911.

Mr. NOBLE: I object to the question.

A. A man was about to die, and the preacher asked him if he would renounce the devil and all his sins, and he said,
2 "I am a sick man. I am going to a strange country, and I don't want to make any enemies."

Q. I don't want to unnecessarily embarrass you by asking you who these manufacturers are by giving the names on the record, but will you look at these two pages, that is pages 5 and 6 of this pamphlet which I show you, which is the Petition of the Government in this case, and state whether you see the names of any of the people who are selling these inferior articles.

THE WITNESS: I will do that if you agree that you will not ask me to specify them after I have looked.
3 Mr. GROSVENOR: Well, you can refuse to answer if I should.

A. I will refuse now. I don't have to look any further. As soon as I opened the first page I saw the name of a concern making enameled iron ware that is a disgrace to the community.

Q. Will you look on the second page?

A. Yes, sir, that is where I got my information from.

Q. And these are all manufacturers under the Arrott patent?

4 THE WITNESS: Are they making it now under the Arrott patent.

Mr. NOBLE: I object to this question as to the Arrott patent.

A. I think they have forgotten the Arrott patent.

Mr. NOBLE: The witness has said that he did not know anything about the Arrott patent.

Mr. GROSVENOR: Were you at any meetings of jobbers and manufacturers of enameled iron ware at

which this arrangement was discussed before it was put in operation in June, 1910. 1

THE WITNESS: Before June, 1910?

Mr. GROSVENOR: Yes.

A. I think this is the first meeting I ever attended, before or since.

Q. I am not referring to a hearing. You said the plan was discussed—

A. (Interrupting): By our officials, not by anyone else; by the officials of our company.

Q. Did you attend any meetings of jobbers at which this plan was discussed in 1910, before it was put in operation? 2

A. Well, we had been trying to get a resale plan for years, and this is the first resale plan we had, and you broke it up.

Mr. GROSVENOR: Will you answer that question; read it.

The stenographer then read the last question.

A. I don't remember attending any meeting called specifically to consider any resale plan on enameled iron ware. I have attended a number of meetings where in the general order of business the resale question came up, and we have done all we could to urge all manufacturers to adopt a resale 3 plan, for under no other plan can we obtain good material of any kind.

Q. By a resale plan you mean the resale to the plumbers?

A. No, I do not. I mean a plan that establishes a price so that a manufacturer will make the best article he can under a fixed cost. In other words, I want to do just exactly the same as the United States Government has done where it has said in certain cases that they were willing to pay a certain price for an article and wanted the best article they could obtain for that price, and they fixed the price. We want the manufacturers to fix a price at which an article is 4 to be sold and then buy from the manufacturer that makes the best article. That is the only way in the world that you can get the material improved.

Q. In other words, you wanted the manufacturers all to have the same price to sell to the jobber? A. Yes, sir.

Q. Then, don't you want the jobbers to have the same price to sell to the plumbers?

1 A. I don't care a rap whether they do or not. I want the manufacturers to have the same price.

Q. To give to the jobber?

A. Yes, sir, so that he will be able to make a good article so that when we sell it we make the money that we bill the thing for and not have claims taken out that far exceed our earnings. We want the manufacturer to fix a price, if you can make it by law, that every manufacturer in the United States must sell by that price, and then we can buy the best article, and that is the way the consumer gets the best goods, whether it is the clothes you wear or enameled iron ware.

2 Q. Wouldn't the same thing apply to the plumber? Didn't you want the jobbers to have all the same price? Is not that the resale price?

A. You asked me what I wanted and I told you what I wanted. All the jobbers naturally want one price, so that they will have no trouble. We have to sell the stuff on such a horribly close margin that the difference between the goods you have a little trouble with and the goods that you have no trouble with exceeds your net earnings.

Q. Then, the advantage of this price list to which I have referred is that it makes the same price to all, is it?

3 A. The real advantage of this plan is that it reduces the cost to the consumer by establishing a fixed price at which the manufacturer sells the article and a fixed price at which the jobber sells it, so that there is no incentive for the jobber to go to some outside man and get him to make some cats and dogs that are principally bitch pups to put upon the public, for which they have to pay. You have broken up the best thing that ever happened in the plumbing supply business for the consumer and you have spread hell all through the plumbing supply trade by giving them condensed essence of compressed trouble.

4 Q. Is the Nemo tub classified in that description?

A. I told you that it was misnamed. It should have been named "hell," and every other second named the same.

Q. Which is that, the Nemo tub? A. Yes.

Q. You say you only signed that agreement with one company? A. No, I did not, I beg your pardon.

Q. How many did you sign it with?

A. I told you I did not know.

Q. Have you any idea?

A. I know we bought from two companies.

Q. During that six months?

A. I don't know all the details of our business, and I don't know from how many we did buy, but I do know that we bought from two, because we bought considerable quantities from them.

Q. Did you sign a contract with each of those two?

A. I told you before I don't know.

Q. You did not know?

A. I don't know. I probably did know because I am President of the Company and I signed all those documents, but when I did sign the first one that settled the question of the rest of them and I just signed them, as many as they gave me.

Q. Which is the other Company beside the Standard Sanitary Manufacturing Company of which you bought so much? A. The Cahill Iron Works.

RE-DIRECT EXAMINATION BY Mr. NOBLE:

Q. I want to bring one question to your attention. I understand the trimmings that go with enameled iron ware was still a matter of competition among the jobbers after June 1st, 1910? A. Yes, sir.

Q. That is true? A. Yes, sir.

Q. And so there was still competition among the jobbers in the sale of sanitary enameled iron ware? A. Yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

1 JOSEPH P. HARTNETT, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. What is your full name, residence and occupation?

A. Joseph P. Hartnett, Secretary of the L. M. Rumsey Manufacturing Company of St. Louis; residence, St. Louis.

Q. Mr. Hartnett, did you get a letter from the Department of Justice, signed by Mr. Joseph Darling, Special
2 Agent of the Bureau of Investigation, inquiring among other things whether you had been forced to sign a resale contract?

A. I was absent from the office for a few days, and on my return I understood that such a letter had been received.

Q. Have you got it with you? A. No, sir.

Q. Did you take a jobber's license agreement under the patents under which Mr. Wayman licensed the manufacturers of sanitary enameled iron ware?

A. I think I did; yes, sir.

Q. I ask you whether or not your Company was forced to sign—

3 A. (Interrupting): Not at all.

Q. (Continuing): This jobber's license agreement?

A. Not at all.

Q. For what reasons, did you sign?

A. Signed it for what we considered the best interests of our Company.

Q. In what respect, will you explain?

A. Yes, sir; for several years, especially for about two years previous to that, we had a great deal of complaint from our customers, from the plumbers and also the users of enameled ware, calling our attention to the very defective ware
4 which was being marketed. We sent out piece after piece ten miles away with a team out into the west end of the town, and the plumber would go on the job and we would be telephoned to take the piece away, and then we would have to go out and take it away again. We sell at about ten per cent. margin and it would cost twelve or fifteen per cent. just to bring it back, and we were very willing and glad indeed to sign the resale agreement.

Q. What was the result following the period when you accepted this resale agreement.

A. Well, it was most satisfactory; even beyond our expectations. 1

Q. The articles you obtained, were they honest articles?

A. How honest they were, I cannot say. I am not an expert, but I only inferred from the proportionate number of fewer complaints received.

Q. Is it not true that seconds were not sold to you after this resale agreement went into effect?

A. The seconds were immediately withdrawn from the market.

Q. And the complaints which you got from the plumbers and users as to defective ware were not so many or ceased? 2

A. Not only were seconds withdrawn, but we had far fewer complaints on what we called strictly guaranteed articles. Before that we had quite a number of complaints even in respect to them.

Q. So you were able, as I understand you, to rely on the article in marketing it to the plumber and also getting it to the ultimate user?

A. We had so much trouble with enameled ware that our Company had discussed the idea of discontinuing the sale of enemaled ware entirely.

Q. During the period this resale agreement was in effect, what was your experience in dealing in sanitary enameled iron ware, that is the experience of your Company? 3

THE WITNESS: I don't understand the question.

MR. NOBLE: Strike it out.

MR. GROSVENOR: No, don't strike it out.

THE WITNESS: I might answer it this way, that it was more satisfactory.

Q. Since January 1st, 1911, what were the conditions?

A. Well, I cannot say much in respect to that, because in the middle of January I went to Florida. I take my vacation in the winter time, and since my return I have not been much in the office. I have been attending various meetings. 4

Q. Was there anything in the contract, in the price list, which fixed the price the jobber made to the user?

THE WITNESS: From the plumber to the user?

MR. NOBLE: Yes.

A. No, sir; it was immaterial to us.

Q. He could put it at any price he pleased? A. Yes, sir.

1 Q. What was the effect of the elimination of seconds from the trade?

A. The effect, so far as we were concerned, gave us new vigor, gave us more interest in the business and it is far more satisfactory and I can safely say that seventy-five per cent. of the trouble was eliminated.

Q. So you would say that during the period that this plan was in operation the ultimate consumer got a better article?

A. Unquestionably so.

Q. The price upon trimmings which went with sanitary enameled ware was not affected by this price?

2 A. No, sir; not our price.

Q. So that as to the trimmings that went with this enameled iron ware, there was competition among jobbers, was there not? A. Yes, sir; very keen.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. What did you say your business was?

A. I am Secretary of the Rumsey Manufacturing Company.

Q. And you sell all kinds of plumbing supplies, do you?

A. Yes.

3 Q. Are you in charge of the selling end of the business?

A. I am kind of jack-of-all trades around the business; I have general jurisdiction.

Q. During the early part of 1910, before June, there was great competition among the manufacturers of sanitary enameled iron ware, was there not, in the sale of the same?

A. Speaking for all of them, I could not answer.

Q. Whom did you buy from chiefly?

A. From the Standard Sanitary Manufacturing Company.

Q. Have you confined your purchases largely to them in

4 the last few years?

A. Yes, sir; we have bought from others, but I think more largely from the Standard than any one else.

Q. Did you get many seconds from the Standard Sanitary Manufacturing Company in 1910? A. Yes, sir.

Q. What is a second?

A. A second is an enameled article which is not guaranteed.

Q. Not guaranteed at all?

A. Well, it is supposed to be guaranteed up to the time of

its reception, but when it comes down to a fine point, there is really no guarantee on it. 1

Q. From whom else have you bought besides the Standard Sanitary Manufacturing Company?

A. The Cahill Iron Works.

Q. Your Company signed a contract, you said, in June, 1910?

A. I think we did on or about that time. I don't remember the exact date.

Q. Did you sign the contract for your Company?

A. No, I think our Mr. Porter signed it, but I am not certain.

Q. You received a notice from the Standard Sanitary Manufacturing Company saying that it was necessary for you to sign such a contract? 2

A. I don't recall receiving such a notice.

Q. Don't you know that that notice was sent out to all the jobbers in the trade? A. No, sir; how could I?

Q. Did you bring your correspondence here, with the Standard Sanitary Manufacturing Company?

A. No, sir; I was in Philadelphia and I got a telegram—

Q. From whom?

A. I got a telegram and a long-distance telephone message from our Company in St. Louis. 3

Q. Did you say there was keen competition among the manufacturers of sanitary enameled iron ware before June, 1910? A. I couldn't say about it.

Q. How about those you bought from?

A. The Cahill Iron Works and the Standard Sanitary Manufacturing Company and the National Sanitary Manufacturing Company of Salem—yes, sir; they were very hard after business.

Q. Any others? A. I cannot recall.

Q. The fact is that the keenest was between the jobbers in their sales to the plumbers? 4

A. I cannot say that, because I don't know what it was among the manufacturers.

Q. Eliminating the comparison, there was a very keen competition in your section of the country between the jobbers of sanitary enameled iron ware? A. Yes, sir.

Q. Very bitter competition? A. Yes, sir.

Q. And the profits were small?

A. No, sir; the profits were losses.

1 Q. This price list which has been spoken of here, after you signed the contract you sold to the plumbers in accordance with the prices laid down in this price list. A. Yes, sir.

Q. And you observe the prices in here? A. Yes, sir.

Q. Wasn't it a fact that most of your competitors, that is the jobbers, also signed similar contracts?

Mr. Noble: How should this witness know what his competitors did?

Mr. Grosvenor: He probably observed the conditions in the trade. If he does not know, let him say so. Will you read the question?

2 The stenographer then read the last question.

A. That I couldn't say.

Q. Wasn't it your observation that after the resale agreement went into effect that the competition between the jobbers as to prices became less intense because all the jobbers, or most of them, observed the resale prices?

A. I don't know if the jobbers all signed the resale contract. I can only speak of our own Company. We signed.

Q. Was the sale among the jobbers improved after June, 1940? A. Yes, sir.

Q. You made more money? A. Yes, sir.

3 Q. That was largely due to the fact that you used this price list? A. Yes, sir.

Q. You made money instead of losing it on these sales?

A. Yes, sir.

Q. The fact is that you sold at a higher price?

A. That I couldn't say.

Q. Where did you make the profit, then?

A. As I stated before, we signed the resale plan. We sell enameled ware on a gross profit of about eight or ten per cent. We would send it to the job, and I suppose around twenty per cent. of it was rejected—

4 Q. By the plumber?

A. Yes; I should judge it was about twenty per cent. that was rejected. Then we had to send our teams out after it. Oftentimes the plumbers would install it without noticing the defects and the user would then notice it, or the architect, and then we would have to take out that tub and that is an expense of five to ten dollars to the plumber and sometimes we have had as many as four that would have to be returned, and instead of paying our bills he would put a bill in to us

for labor charged, so that I can say the net result, as far as we were concerned, was not profitable. 1

Q. You are not able to say that the prices observed under this book were higher than before?

A. No, sir; I never compared them. In fact, the selling end was directly in charge of Mr. Porter.

Q. Mr. Porter? A. Yes, sir; Mr. Porter.

Q. Are you able to discuss the condition that has existed since January, 1911?

A. No, sir; for the reason I have already stated, that I have been absent from the office.

Q. Were you at any meetings of jobbers or manufacturers of either enameled iron ware or jobbers of plumbing supplies at which this resale agreement was discussed? 2

A. Meetings, no. A meeting, yes.

Q. Where was that meeting? A. Niagara Falls.

Q. When was it? A. March or April.

Q. 1910? A. Yes, sir.

Q. Was that a meeting of jobbers of plumbing supplies?

A. Yes, sir.

Q. Were any manufacturers of enameled iron ware present? A. I think not.

Q. Are you positive? 3

A. As far as I can recall now there were none.

Q. How did that question come up, of resale prices?

A. I think it was first referred to by a gentleman from Chicago, Mr. Kellogg.

Q. What did he say?

A. I don't recall what he said. He spoke of the resale plan, and said that Mr. Wayman, who held the several patents, was there to explain the plan.

Q. And you understood that it was confined to sanitary enameled iron ware?

A. I think that was my impression at the time.

Q. And it was explained at that meeting, was it, that this proposed licensing arrangement contemplated the fixing of a resale price? 4

Mr. NOBLE: I object to that. The Government does not need to testify. Let the witness testify.

Mr. GROSVENOR: Read the question.

The last question was then read by the stenographer.

A. By Mr. Wayman, yes.

Q. By Mr. Wayman to the jobbers present?

A. Yes, sir.

Q. Was a resolution passed by the jobbers approving of such a resale plan? A. That I don't remember.

Q. Was there any other discussion of the subject other than that by Mr. Wayman and Mr. Kellogg?

A. I think a number of the gentlemen there referred to it in a general way. What any of them said specifically, I do not recall. The consensus of opinion was that it would be a good thing for everybody.

Q. Were you present at any other meeting or conference at which this license arrangement was discussed?

A. No, sir; I do not recall any other meeting which I attended or at which I was present.

Q. Have I asked you with what companies your Company signed this license contract?

A. I am not certain of the number, but I am satisfied that it was more than one. With whom, I do not know.

Q. You signed with the Standard Sanitary Manufacturing Company? A. Yes.

Q. Were you in Toledo in June, 1910?

THE WITNESS: Was I in Toledo?

Mr. GROSVENOR: Yes, at that meeting of jobbers there.

THE WITNESS: The meeting of jobbers in Toledo?

Mr. GROSVENOR: Yes, or of the Central Supply Association, were you there?

A. I was not.

Q. Or at any meeting in Toledo in June, 1910?

A. Not that I recall.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

ALEX B. PIERCE, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Mr. Pierce, please state your full name, residence and occupation?

A. Alex. B. Pierce; St. Louis; Vice-President of the N. 1
O. Nelson Manufacturing Company.

Q. Does that Company deal in sanitary enameled iron ware and plumbing supplies?

A. Jobbers and dealers in plumbing supplies.

Q. You purchase sanitary enameled iron ware?

A. Yes, sir.

Q. And you sell it to the plumbers? A. Yes, sir.

Q. Did your Company receive a letter from the Department of Justice, from Mr. Darling, asking if your Company was forced into signing the resale agreement? A. Yes, sir.

Q. Well, were you forced into signing that agreement? 2

A. No, sir; we were not.

Q. Why did your Company sign it?

A. Because we wanted to; because we thought it to the best interests of our Company.

Q. Why did you think it to the best interest of your Company to do so?

A. Because we wanted to get good enameled ware.

Q. Had the enameled ware that you had been purchasing been unsatisfactory? A. To a great extent; yes, sir.

Q. After the time that you signed this agreement, did you get better sanitary enameled iron ware? 3

A. We certainly did.

Q. How about the seconds?

A. Seconds were eliminated entirely. That was one of the greatest bones of contention in our business, especially by the irresponsible plumber. He would take a specification for guaranteed ware and then buy seconds, and in a great many instances put them in as guaranteed ware. We could not dictate to him what he should buy, and he often bought seconds and put them in as guaranteed ware, and the jobbing house would get the condemnation of the architect and the owner for the quality of the ware installed. 4

Q. And the ultimate consumer was thereby damaged?

A. Yes, sir; and the jobber who sold the goods would get the blame for selling such goods. Our reply was that we could not dictate to our customer what he should buy.

Q. After the resale agreement went into effect, tell me what the conditions were then, what could the plumber do then?

A. We sold him first class goods because we had no seconds to sell him—we sold him better goods.

Q. So the ultimate consumer got an article on which he could rely and on which you could rely?

A. Got what he was paying for.

Q. Previous to that time he got a spurious article, according to your testimony?

A. Yes, sir; in a great many instances, not in all cases.

Q. After you signed the resale agreement, was there competition between jobbers in your locality?

A. Absolutely so; the resale agreement did not prevent competition.

Q. Explain a little more fully what you mean?

A. I mean by that that enameled ware is not a finished article; to make it a finished article requires trimmings, brass trimmings, faucets, wastes and other goods that are bound to be added to enameled ware to make it a complete and finished article. The competition was just as keen after the resale agreement went into effect as it was before.

Q. Did the resale plan have any effect on the price at which the plumber sold the enameled ware to the consumer?

THE WITNESS: In reference to competition?

Mr. NOBLE: Yes, or in price.

A. No, sir.

Q. He sold at any price he pleased?

A. Yes, sir; either at cost or at any cost he chose to put on. He was not regulated in any way, shape or form by the resale agreement.

Q. Now, the profit that you made after the resale agreement went into effect, as compared with your business in sanitary enameled iron ware, previous to its going into effect, state what it was?

THE WITNESS: You do not mean the per cent.?

Mr. NOBLE: No.

A. Well, it was better; we did not have the number of complaints about the ware that was sold. We did not have disgruntled owners applying to the plumber, who would take his trade away from us because he would not allow his plumbers to put in seconds, and the resale plan was a benefit to us.

Q. Without regard to the price at which you sold the articles? A. Absolutely.

CROSS EXAMINATION BY Mr. GROSVENOR: 1

Q. Mr. Pierce, from whom did you buy most of your enameled ware before June, 1910?

A. We bought from several, but our largest purchases were made from the Standard Sanitary Manufacturing Company.

Q. Next to the Standard Sanitary Manufacturing Company, who was your largest seller? A. McCrum-Howell.

Q. And after them?

A. The Union Sanitary Manufacturing Company, of Noblesville, I think that is the name.

Q. And after them? 2

A. Probably the Cahill Iron Works.

Q. And after them?

A. I cannot speak further. We did not confine our purchases to any one concern. Our largest purchases were from the Standard Sanitary Manufacturing Company.

Q. Did these four named supply you with the largest part of your enameled ware? A. Yes, sir.

Q. Ninety per cent.? A. I should say yes.

Q. Do you recall in June, 1910, receiving a circular letter from the Standard Sanitary Manufacturing Company of this character (indicating)? A. I do not remember. 3

Q. You have no recollection?

A. I have no recollection whether such a letter was received or not. I know I signed the agreements without any hesitancy for our Company.

Q. Do you recall whether or not you received a letter in June, from the Cahill Iron Works, containing this sentence: "It is necessary for you to execute this contracts before we can sell you sanitary enameled ware." A. I don't remember.

Q. Do you recall whether you received early in June a letter from the McCrum-Howell Company, containing this sentence: "It is necessary for you to execute these contracts 4 before we can sell you licensed sanitary enameled iron ware?"

A. I don't remember; such letters may have come and gone to the buyer's department, but I don't remember.

Q. Do you recall whether you received a letter from the National Sanitary Manufacturing Company about the first of June, containing this sentence: "It is necessary for you to

1 execute this contract before we can sell you licensed sanitary enameled iron ware?"

A. The same answer would apply as to the other manufacturers.

Q. Do you recall whether you received in the early part of June, 1910, from a large number of manufacturers of enameled iron ware, contracts not filled out, which were to be entered into by you with those manufacturers?

THE WITNESS: You mean these licenses which we did sign?

Mr. GROSVENOR: Yes, sir.

2

A. I do remember that; but I don't remember how many there were or from whom.

Q. You also received one from the Standard Sanitary Manufacturing Company, that is a letter from the Standard Sanitary Manufacturing Company?

A. I don't know what you mean by a letter from the Standard Company. I am speaking of the printed contract itself.

Q. Did you receive such a contract from the McCrum-Howell Company to be signed by you?

3 THE WITNESS: Such a printed contract as was signed with the others?

Mr. GROSVENOR: Yes.

A. I presume we did; we continued to buy from McCrum-Howell after this agreement went into effect.

Q. You understood early in June that unless you signed these contracts, that it was necessary for you to sign these contracts to get enameled goods?

A. We did not hesitate to sign the contracts.

Q. But was that your understanding, that it was necessary for you to sign these contracts to get enameled goods?

4 A. That may have been the understanding.

Q. Was it your understanding?

A. Yes, in a general way; yes.

Q. And these four companies supplied you with ninety per cent. of your enameled ware?

A. I should say yes, without looking up the actual record.

Q. What is the character of your business in enameled ware? You have a warehouse in St. Louis and you ship from there to surrounding cities and states?

A. We have warehouses in St. Louis, Los Angeles, San Francisco and Pueblo. 1

Q. Your business is not confined to St. Louis, then?

A. Absolutely not.

Q. In making sales to the plumbers did you observe the prices set out in the price list? A. In enameled ware only.

Q. That is all that this price list covers, is it not?

A. That I don't know.

Q. You did in making these sales to the various states after June, 1910, observe prices laid down in this price book?

A. Yes, sir.

Q. Before June, 1910, the jobbers did observe these prices on enameled goods in this price book? 2

A. Yes, sir; and also after June, 1910.

Q. Do your competitors observe these prices?

A. I don't know anything about our competitors.

Q. Before June, 1910, was the business profitable or unprofitable on enameled iron ware?

A. I can only speak for our house, and with us it was unprofitable.

Q. After June, 1910, did your enameled ware account show better profits?

A. In view of the fact that we were receiving better goods and had less claims. 3

Q. It did, in view of the things you have mentioned?

A. Yes, sir.

Q. Were you present at any meeting of jobbers at which this resale plan was discussed?

A. Well, I have been present at meetings where the resale plan not only on enameled ware but on every other commodity handled by plumbing supply houses was discussed, in a general way.

Q. Were you present at any meeting at which a plan for the fixing of a resale price on enameled ware was discussed? 4

A. Yes, sir.

Q. Where? A. Niagara Falls.

Q. At any other meeting? A. Not that I recall.

Q. Were you at Toledo?

A. Yes, sir; at the Central Supply Association's meeting.

Q. In June? A. Yes, sir.

Q. Were you present when this arrangement was discussed there?

A. I was in and out of the hall while there was some dis-

1 cussion going on. I was not there during the entire discussion.

Q. You were there during part of the discussion?

A. I should say yes.

Q. You understood speeches were being made for and against the proposition? A. I understood that, yes.

Q. Did you hear any one speak in favor of it whose name you can recall?

A. No; I cannot recall any names. As I recall now, this discussion was brought up after a regular meeting of the Central Supply Association, and when that discussion was
2 going on I was down in the lobby of the hotel a good part of the time. I cannot recall specifically whether I heard any certain person speaking for or against the plan. My memory does not serve me on that point.

Q. The plan being discussed in June in Toledo was the same plan being discussed at Niagara Falls in April?

A. Well, this meeting in April at Niagara Falls was not called for any discussion on any resale proposition. During the meeting there was some discussion brought up on the resale plan on enameled ware.

Q. That was before it was put into effect?

3 A. Yes, sir; it was not put into effect until June, and this meeting was in April or March, 1910.

Q. The Toledo meeting was the meeting for discussing the plan that was put into effect, which was considered at Niagara Falls before it was put into effect?

THE WITNESS: I don't understand your question.

Q. Wasn't the same plan discussed at those meetings, although at one meeting it had not yet been put into effect?

A. Well, as I stated, at the Niagara Falls meeting there were a great many subjects discussed, not only enameled
4 iron ware, but a great many things in our line.

Q. By resale plan, you mean a uniform price from the jobber to the plumber? A. Yes, sir.

Q. I mean a fixed price from the jobber to the plumber?

A. No, sir; what I mean is a fixed price from the manufacturer to the jobber and not a fixed price from the jobber to the plumber, but a minimum price at which such commodities might be sold.

Q. In discussing the resale price you mean a price below which the jobber might not drop, but he can go above that?

A. Yes, sir; just as high as he chooses. 1

Q. This price, then, fixes the price below which the jobber might not drop? A. Yes, sir; I so understand it.

Q. When you say, then, that competition existed among jobbers in prices after June 1st, 1910, you mean that there was competition in how far above that price they could go?

A. No, I did not mean that; I mean competition existed after June 1st, 1910, on enameled ware, just as it did before June 1st, 1910, because enameled ware is not sold by the jobber as a fixture by itself. It needs faucets and supplies and trimmings which go to make that fixture complete, on which there was just as much competition. 2

Q. Are you familiar with the terms of this price list?

A. Yes, sir; I think so.

Q. Don't you know that it requires the jobber to itemize all the enameled ware which he sells?

A. It was done in all cases.

Q. Doesn't it attempt to have it done?

Mr. NOBLE: I object to that. The price list is in evidence and speaks for itself.

Mr. GROSVENOR: What was the question?

The last question was then read by the stenographer.

THE WITNESS: Shall I answer it? 3

Mr. NOBLE: The witness need not answer a question which is objected to on this ground. If the other side wants it answered it can insist on it.

Mr. GROSVENOR: Will you read the question again?

The stenographer then read the last question.

Mr. GROSVENOR: Will you answer that?

A. My understanding was that it attempted to have it done.

Q. Did Wayman's auditors ever look over your books to see if you followed out the terms of the contract? 4

A. No, sir.

Q. Did any auditors ever examine your books to ascertain whether you had observed the terms of the license contract?

A. No, sir.

Q. What is a second, Mr. Pierce?

A. It is anything that a plumber can buy to put in in place of a guaranteed article. In other words, it is an article that we, as reputable jobbers, speaking for ourselves alone, would not attempt to sell as a first class article. We sell a great

1 many seconds that are made seconds by handling in our own store that originally came from the manufacturers as a guaranteed article. There may be a chip or a scratch on the rim, or something of that sort.

Q. What is the condition since January 1st, 1911?

THE WITNESS: In what respect?

Mr. GROSVENOR: In the jobbing trade generally in enameled ware. You testified on direct examination that conditions improved in June, 1910?

A. Yes.

2 Q. Well, has there been any change since January, 1911?

A. Yes, if anything they are worse than they were prior to June, 1910.

Q. Is the same trouble respecting seconds found now in the trade? A. Yes, sir.

Q. Can you name the manufacturers who sell the seconds as first-class who should not do so?

A. No, sir; I object to doing so.

Q. Well, will you look at this petition, on pages 5 and 6, and state whether there are any on those two pages?

A. I will answer it this way: We do not buy seconds if

3 we know it.

RE-DIRECT EXAMINATION BY Mr. NOBLE:

Q. I understood the Government inquired whether in making out your bill or invoice of sales in sanitary enameled iron ware that the trimmings, fixtures, etc., were likewise itemized on that invoice?

Mr. GROSVENOR: No, I did not mean that.

Q. Didn't you so understand that question, Mr. Pierce?

A. That was my understanding of it; yes, sir.

4 Q. Now, going back to that question in itemizing these trimmings, faucets, etc., which you described as being necessary to make a piece of enameled iron ware a complete fixture, were you compelled to sell them at any fixed price?

A. No, sir.

Q. You could sell them at any price you pleased?

A. Yes, sir; give them away if you chose.

Q. So in making sales of sanitary enameled iron ware there was competition after June, 1910, as there had been before June, 1910?

A. I answered that question very specifically that there was. 1

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Will you look on page 2, the heading is "Lump Sum." It reads, "The ware covered by the Price Sheets shall be invoiced by individual items, which are to be billed separately (less all fittings) and it is not permissible to bill collectively several articles in a 'lump sum.'" Did you make out your bills to plumbers in accordance with that provision?

A. Sometimes we did and sometimes we did not.

Q. You understood that it was a condition of the contract? 2

A. I answered that I presumed that was the meaning of it. It was not done in all cases.

Q. Do you know that other jobbers were forced to comply with that provision?

A. I don't know anything about other jobbers.

Q. If you complied with that provision every time you sold a bathtub you would have to itemize on your bills the price of the bathtub as explained on this sheet? A. Yes, sir.

RE-REDIRECT EXAMINATION BY Mr. NOBLE:

Q. And you would keep up the competition you have described by selling in connection with that article the trimmings that went with it? 3

A. Yes, sir; because the tub would not be worth anything without the trimmings that went with it.

Q. So that the competition existed then just the same after June, 1910, as before? A. Yes, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

At this point a recess was taken until two o'clock P. M. 4

1 After Recess.

OTTO F. FELIX, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY MR. NOBLE:

Q. Please state your name, residence and occupation?

A. Otto Felix; Secretary and Treasurer of the Pittsburgh Supply Company, Pittsburgh.

Q. Does the Company with which you are connected deal
2 in sanitary enameled iron ware? A. They do.

Q. And plumbers' supplies generally?

A. Plumbers' supplies generally.

Q. Did you receive a letter from the Department of Justice signed by Mr. Joseph Darling, asking you if your Company was forced to sign a resale agreement on sanitary enameled ware? A. Yes, sir.

Q. Were you forced to sign that agreement?

A. We were not; no.

Q. Why did you sign it?

A. I thought it was an advantage to us to sign it?

3 Q. What advantages were there which induced you to sign it?

A. The main advantage was that I took it for granted that they would increase the quality of the goods.

Q. And after you took that license agreement, was the quality improved?

A. I so understand from the sales department.

Q. Did you have as many complaints as before?

A. Nothing like as many.

Q. From goods that you did sell?

A. Nothing like as many.

4 Q. So that as between the time anterior to the time of signing of the jobber's license agreement and after the jobber's license agreement went into effect, there was a difference in the complaints that you got in regard to the quality of the goods? A. Considerable.

Q. Before it went into effect, did you find yourself with seconds on your hands sold as seconds or high grade tubs?

A. We had more or less trouble with high grade goods, and the inference was that we got seconds instead of firsts.

Q. After the agreement went into effect, will you tell me whether or not you got any seconds then? 1

A. Not to my knowledge.

Q. What is the difference between a second and a guaranteed tub?

A. I should say that a second was a defective article and a guaranteed tub or a first was a first class article.

Q. Prior to the license agreement going into effect, did you receive sanitary enameled iron ware which was sold to you as guaranteed first class ware which was in fact defective?

A. As I said before, we took it for granted that they were, because we had so many complaints. 2

Q. After the first of January, 1911, will you tell me what was the condition of the trade in sanitary enameled iron ware with respect to the goods?

A. In 1911—well, I can't say much about it. I am not close enough to testify that there was much difference.

Q. Did you have a stock of goods on hand at the time this resale contract went into effect? A. We did.

Q. As compared with the goods which you got during the resale plan what have you to say of those goods which you had on hand? 3

A. I felt at the time the resale price went into effect we would most likely get better quality goods and if we could have made a change at even a greater cost to us for handling, we would have gladly, for the benefit of our reputation, exchanged them for goods that we got later, because we thought our customers would be better satisfied.

Q. After the resale plan went into effect, was there competition still between jobbers? A. Yes, sir.

Q. The resale plan did not contemplate your putting any price on the faucets and things that went with the sanitary enameled ware, did it? A. No. 4

Q. So that in selling a plumber a piece of sanitary enameled iron ware with the necessary trimmings, were you obliged to sell at any fixed price on the whole order? A. No.

Q. You could sell all the trimmings except the sanitary enameled iron ware at any price you pleased, is that correct?

A. Yes, sir.

Q. Was there any difference in competition, as far as you know?

A. Not that I noticed, no. It is just as keen as ever, unfortunately.

Q. Was the plumber obliged to sell his goods to the consumer at any fixed price? A. No.

Q. He could sell at any price he pleased?

A. Yes, we did not give him any fixed price.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. What is your position with the Pittsburg Supply Company? A. Secretary and Treasurer.

Q. Have you charge of the selling end of the business?

A. I have general charge of the business.

Q. With what Company do you do the larger part of your sanitary enameled iron ware business?

A. Naturally we do a great part of it with the Standard Sanitary Manufacturing Company, located near home here, in this district and we also buy extensively—have you the names there on that list, I can give them from that.

Counsel then handed a list of the defendants to the witness.

THE WITNESS (continuing): You might say that we buy less than half from the Standard Sanitary Manufacturing Company.

Q. This was prior to June, 1910? A. Yes, sir.

Q. Please confine yourself to the time just preceding June, 1910?

A. The Standard, for one; United States Sanitary Manufacturing Company; the Wheeling Enameled Iron Company; we bought most of our material from them.

Q. Did you buy ninety per cent. from them, would you say?

A. I should say that we bought very close to ninety per cent. from them.

Q. In June, 1910, do you recall receiving a letter similar to Petitioner's Exhibit No. 186 from the Standard Sanitary Manufacturing Company?

A. I do not remember that particular letter (indicating) but I recall that we had a license sent to us.

Q. You recall that you had a license agreement sent to you? A. Yes, sir.

Q. Do you recall receiving a notice from that Company stating that it was necessary for you to execute this contract

before they could sell you licensed sanitary enameled ware? 1

A. No, I do not.

Q. Do you recall receiving contracts about the same time from the Wheeling Enameled Iron Ware Company?

A. I suppose so, because we bought from all of them.

Q. And these letters contained these contracts?

A. Yes, sir.

Q. Did you understand that in order for you to continue buying you must execute these contracts?

A. I don't know, because we were buying from them anyhow.

Q. Did you understand that it was necessary for you to 2 sign one of these contracts in order for you to obtain these goods from them thereafter?

A. I do not know, because we were buying from them then, and we would naturally be glad to continue.

Q. Did you understand that it would be necessary for you to sign these contracts in order for you to obtain goods from these manufacturers from whom you had been buying thereafter? A. That was the inference.

Q. What inference?

A. That we would be obliged to sign the contract in order to secure their goods. 3

Q. You did understand that?

A. I signed it with that in view, I suppose. I never read the letter, and I never read the contract, I might say.

Q. Now, what is a second? A. A defective article.

Q. A second is a defective article, whatever may be the cause of the defect?

A. I should think so, yes.

Q. After you had signed the contract, did you observe the price list in making the sales to your customers?

THE WITNESS: In enameled goods?

Mr. GROSVENOR: Yes. 4

A. I think we did; yes, sir.

Q. Where are your customers located, generally?

A. Within a radius of 150 and 200 miles.

Q. Of Pittsburgh? A. Yes, sir.

Q. They are then in other states than Pennsylvania?

A. Yes, sir.

Q. With whom did you sign contracts in June?

1 A. We signed with the ones I mentioned there, and a few others.

Q. And in buying goods from those manufacturers, were you given the prices mentioned in those price lists?

A. We were given that price list.

Q. What was the chief advantage of this price list?

A. We figured that they would likely give us a better quality goods and that would cost us a great deal less trouble. Previous to that time competition was so keen among the manufacturers that they would give us almost any kind of an article that would stand boxing.

2 Q. Wasn't one of the advantages that it fixed the resale price?

A. Not any particular advantage, but it saved us money in not having to take back defective ware.

Q. Were you present at any meetings in the early part of 1910, when this resale arrangement was discussed?

A. No, sir; I was not.

Q. When did you first discuss that arrangement?

A. I heard about it but I was not at any meeting.

Q. You had on hand quite a supply of goods when the arrangement went into effect? A. Unfortunately, yes.

3 Q. And did you sell them at the resale prices set out here?

A. I take it that we did.

Q. So that you made no distinction in the sale of your articles between those received before June 1st, and those received after June 1st? A. No.

Q. If there had been this substantial difference in quality between the goods that you testified to on your direct examination, wouldn't you have made that difference?

A. I remarked that I would gladly have exchanged the goods that we had in stock for the new class of goods. I took it the manufacturers would give us a better quality

4 goods.

Q. But you sold the old goods at the same prices as the new goods? A. I suppose most of it.

Q. Now, you testified about the number of complaints. Can you state anything more definite about that?

A. I know that several times I took up the question of enameled ware with our sales department and the letters would pass over my desk with complaints, and I questioned whether it was advisable for us to handle enameled goods.

Q. This was prior to June, 1910?

A. Yes, sir; prior to June, 1910; I questioned whether it 1
was advisable for us to handle enameled goods, because we were handling them at a loss.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

WILLIAM IVY, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows:

2

DIRECT EXAMINATION BY MR. NOBLE:

Q. Will you state your full name, age, residence and occupation?

A. William Ivy, President of the Monument Plumbing Supply Company.

Q. Do you deal in sanitary enameled iron ware?

A. Yes, sir.

Q. And plumbing supplies generally? A. Yes, sir.

Q. Did you or your Company receive a letter from the Department of Justice, signed by Mr. Joseph Darling, and asking you whether you were forced to sign a resale contract 3
relative to sanitary enameled iron ware?

A. I don't know whether it was signed by Mr. Darling, but we received such a letter from some Department of Justice of the United States.

Q. Did you receive a resale license agreement for the sale of sanitary enameled iron ware under the Arrott patent?

A. Yes, sir.

Q. Were you forced to sign it? A. No, sir.

Q. Why did you sign it?

A. So I could get better quality goods instead of getting into competition for cheaper quality goods, so that I could 4
go in for better quality goods.

Q. Did you consider—

A. I considered that necessary, that the enameled ware business be put on that basis.

Q. Comparing enameled goods that you dealt in prior to June, 1910, and thereafter, that is after the agreement went into effect, was there any difference in the quality of the goods?

1 A. Yes, sir; considerable. We can only judge that by the quantity of goods returned to us by our customers. After it was put into effect, some two or three months, we began to see that there was less complaint than there previously had been.

Q. Now, since January 1st, 1911, has there been any difference in competition in the sale of sanitary enameled iron ware? A. No, sir.

Q. Have you noticed any difference in the quality of the goods you have received since January 1st, 1911?

A. Yes, sir; I have. The quality of the goods is much
2 inferior, judging from the quality of the goods that we have now. We do not see the goods and they are not opened until they arrive on the job. During the resale agreement plan we felt morally certain that anything we sent out would stay.

Q. In other words, the guarantees under which you bought them, did you think they were good and did you find them good?

A. Yes, sir; we thought them good and they were good.

Q. What do you understand in the trade as a second?

A. An imperfect article, something that will not stand the test of time.

3 Q. What do you understand a guaranteed article to be?

A. An article that will stand forever, or throughout a life of reasonable length.

Q. During the time the resale agreement was in effect, did you have any seconds sold to you? A. No, sir.

Q. Was the quality of the guaranteed ware better than it was before June 1st, 1910? A. I so considered it; yes, sir.

Q. Since January 1st, 1911, what have you to say as to the quality of the so-called guaranteed goods?

A. It is not up to what it was.

Q. During the resale period?

4 A. During the resale period.

Q. Did you make any more money in the dealings that you had in sanitary enameled iron ware which you purchased from licensed manufacturers during the period of the resale agreements than you made upon the sale of enameled ware before that time?

A. I made more under the resale agreement.

Q. What was that due to?

A. We had less complaints; didn't have customers holding up our accounts and less claims for defective goods.

Q. And those things helped to lower the price of the goods? A. Yes, sir. 1

Q. Was there competition between jobbers during the resale period? A. Yes, sir; just as keen as ever.

Q. Why?

A. Because a piece of enameled ware is not sold except when complete, that is when we add the necessary materials and things to make it a complete fixture, and when I figure enameled iron ware, my fixtures were added to that same per centage of cost, to which I added my percentage of profit which I had previously had in selling goods.

Q. So you were able to put those trimmings in on such terms as you wanted to and so compete with the other jobbers? A. Yes, sir. 2

Q. Was there any difference in the price at which the plumber sold to the consumer? A. None whatever.

Q. As I understand the consumer got a better article then than either before or after that period?

A. In my opinion; yes, sir; he did.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Ivy, who supplied you with the large amounts of enameled ware that you purchased? 3

THE WITNESS: Previous to—

Mr. GROSVENOR (interrupting): June, 1910.

A. Well, previous to October 1st, 1909, the Standard Sanitary Manufacturing Company supplied the largest portion. After April, 1910, the L. Wolff Manufacturing Company.

Q. In June, 1910, please name the chief manufacturers of enameled ware that supplied you?

A. L. Wolff Manufacturing Company, the Standard Sanitary Manufacturing Company and the Cahill Iron Works. 4

Q. Did they supply you with ninety per cent. of the enameled ware that you bought? A. Yes, sir.

Q. Did you receive about the beginning of June, 1910, a letter like that (indicating), similar to Exhibit No. 186?

A. I cannot recall receiving the letter. I can recall receiving the printed contracts.

Q. Such as the jobber's license agreement? A. Yes, sir.

Q. You received those from the Standard Sanitary Manufacturing Company? A. Oh, from at least half a dozen.

Q. You received them from the Standard Company?

A. Yes, sir.

Q. And the L. Wolff Manufacturing Company?

A. Yes, sir.

Q. And the Cahill Iron Works? A. Yes, sir.

Q. Do you recall letters accompanying those contracts saying that it was necessary for you to sign those contracts in order to obtain licensed sanitary enameled iron ware?

A. I don't recall those letters.

Q. Did you understand that it was necessary for you to sign those contracts before you could get licensed enameled ware? A. I so considered it.

Q. You so considered it? A. I so considered it.

Q. That is you considered that you had to sign them?

A. Yes, sir; you are speaking of the licensed ware, I believe.

Q. I am speaking of any ware from those manufacturers.

A. No, not any ware.

Q. Any enameled ware?

A. No, any licensed enameled ware. They may have made other ware.

Q. Did you know of any such?

A. Yes, sir; they made specialties.

Q. Specialties of what kind?

A. A man might want something special made that had nothing to do with the plumbing business.

Q. But the general line of goods—

A. The general line of enameled ware I considered it necessary to buy that licensed enameled ware.

Q. Do you sell in other States than Missouri?

A. Yes, sir.

Q. After you signed the contract did you observe this price list? A. On the enameled ware I observed it.

Q. On all your sales of enameled ware to plumbers?

A. Yes, sir.

Q. And in your purchases from these manufacturers the prices that you paid were governed by this price list?

A. Yes, sir.

Q. With whom did you sign contracts?

A. Let me see the list. The Standard Sanitary Manufacturing Company; the L. Wolff Manufacturing Company; the Cahill Iron Works; the Day-Ward Company, and the McCrum-Howell Company, and I think with the Union Sani-

tary Manufacturing Company, if they are the parties who are at Noblesville, Indiana. 1

BY MR. NOBLE:

Q. That is where they are. There are some others on the other page.

THE WITNESS: And the Wheeling Enameled Iron Company also.

BY MR. GROSVENOR:

Q. During this period, from June, 1910, to January, 1911, did you buy enameled ware from any manufacturers other than these stated here? A. No, sir. 2

Q. You then observed that term of the contract which provided that you could not buy from manufacturers not named in the contract?

A. No, because I got no orders for any other class of goods.

Q. You knew of that clause in the contract which you signed, didn't you?

A. Yes, but I would not have respected it in any way.

Q. Did you have on hand a supply of this ware in June, 1910? A. A very small stock; yes, sir. 3

Q. And did you sell that at the prices in the price list?

A. I did.

Q. Did you make any discrimination between those goods—

A. It was impossible to make any discrimination, because all the goods come packed alike, and it was impossible to sell them separately.

Q. You did not think the difference in the goods warranted a sale at a different price?

A. Yes, sir; I called a meeting of the boys and asked them if we should not return them even at a loss. 4

Q. You did sell those goods, though, at the price list prices? A. Yes, sir.

Q. The same as the new goods? A. Yes, sir.

Q. You say since January, 1911, there has been a drop in the quality? A. I say so; yes, sir.

Q. I suppose you refer to some of the manufacturers from whom you have been buying? A. Yes, sir.

Q. Who are those?

A. The L. Wolff Manufacturing Company—

Q. You include, then, those names that you mentioned?

Mr. NOBLE: I don't think you should compel the witness to identify the names of the people from whom he buys. It is not necessary.

A. Yes, I include among the manufacturers those names that I mentioned that I was buying from previously.

Q. Do you know whether or not they have discontinued using the Arrott patent since January, 1911?

A. I have no means of knowing that; no, sir.

Q. Respecting complaints, how many complaints have you had since January 1st, 1911?

A. I have not kept track of the number, but it is a daily affair to have some plumber call me or my assistants up and tell me that they have a defective piece of ware delivered a day or two before and to come out and get it. There have been as high as two or three complaints of that kind a day.

Q. You testified on direct examination as to a number of things that enabled you to make more money on your enameled ware business from June, 1910, on. Wasn't one of the items the fact that you were getting prices established by that price list?

A. No, that was not it. While I quoted the price, that was only one portion of the finished article only to which I added the cost of the other articles, and to all I added my per cent. of profit.

Q. That is you sold your trimmings higher?

A. I sold the trimmings lower so that the same article brought me about the same price as before.

Q. Did you observe that provision in the price list that the different wares should be itemized? A. No.

Q. Did you attend any meetings of jobbers in 1910 at which the resale proposition was considered?

A. I was at one meeting at Toledo.

Q. That was in June?

A. I think it was about the middle of June.

Q. The Central Supply Association?

A. The Central Supply Association meeting.

Q. And there was a discussion—

A. After the regular meeting was over and to which I was not invited, but being in the room I stopped and listened to it.

Q. And you heard the speeches? A. Yes, sir.

Q. Some spoke in favor of it? A. Yes, sir.
Q. And some against it?
A. Yes, sir; some against it. Those who spoke in favor of it spoke particularly because of the profit it gave them on their goods. Some had had little associations and they had been able to sell higher, but the resale price made them all sell at the same price.
Q. And those were the ones who objected to the resale price? A. Yes, sir; at that meeting.
Q. That was not your situation? A. No.
Q. Some manufacturers were present at that meeting?
A. Yes, sir; I noticed several.
Q. Mr. Torrance was present?
A. Yes, sir; Mr. Torrance was present.
Q. And he spoke in favor of the proposition?
A. I don't remember what he spoke of because I did not stay very long.
Q. Have you any recollection of what he said? A. No, sir.
Q. Did he speak in opposition to the proposition?
A. No, sir; I don't think I heard him speak at all. I was in and out.
Q. Was Mr. Wolff speaking about it?
A. I don't remember.
Q. Mr. Cline—do you remember him saying anything?
A. No, I believe the only one I remember speaking about it was a gentleman named Mr. Kohler.
Q. Mr. Kohler? A. Yes, sir.
Q. Was he in favor or against it? A. He was against it.
Q. Do you recall the name of any manufacturer who spoke in favor of the proposition?
A. No; I do not remember being in there to listen at all, only a very short while.
Q. Were you at any other meetings? A. No, sir.
Q. The St. Louis jobbers signed up quickly?
A. I haven't any idea; I can only speak for myself.
Q. Early in June, didn't you? A. Early in June.
Q. Can you give the exact date?
A. No, I cannot give the exact date.
Q. Were you ever at any meeting in Chicago in June, and July at which the same jobbers were present and discussed the agreement?
A. I have been at nearly every meeting of the Central

1 Supply Association, but if there was such a matter spoken of, I do not remember it, in Chicago.

Q. I don't mean the Central Supply Association, but just a few Western jobbers? A. No, sir; I do not recall it.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

THOMAS C. BOSWELL, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing
2 Company and others, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY MR. NOBLE:

Q. What is you full name, residence and occupation?

A. Secretary of the Aird-Donn Company.

Q. What is their business?

A. Plumbing and setting and fitting supplies.

Q. Do you deal in sanitary enameled iron ware?

A. Yes, sir.

Q. Did you sign a license agreement to buy sanitary enam-
3 eled iron ware from Wayman or any of the licensed manufacturers? A. I believe we did.

Q. Did you receive a letter from the Department of Justice asking if you were forced to sign that agreement or not?

A. We did.

Q. Were you forced to sign it? A. Positively no.

Q. Why did you sign it?

A. Why did I sign it—simply because I thought it was the best thing that ever happened for the benefit of the people who sell enameled iron ware and principally because the man who buys it and installs it in a house or office building would
4 get what he was paying for.

Q. How was that brought about under the resale plan?

A. Before the resale plan went into effect, an architect would specify a certain class of fixtures. An unscrupulous plumber would come around and buy almost anything that he wanted to and put it in. We were perfectly helpless. After the resale plan went into effect, we discontinued selling seconds and sent a circular letter around to all our trade, stating that hereafter we would not handle the non-guaranteed goods.

Q. What is your understanding in the trade of what a

second means and what a guaranteed article or a first-class article is? 1

A. My idea of a second is anything that is poor or bum or defective—not necessarily defective, but any cheap thing that is way below the standard. That is my idea of a second. A guaranteed article is anything that the manufacturers will stand behind.

Q. After the license agreement went into effect, did the manufacturers guarantee their enameled ware to be what it purported to be? A. Yes, sir.

Q. Was that of benefit to the consumer? A. Yes.

Q. Was it also of benefit to the jobber? A. Yes, sir. 2

Q. You had more or less trouble after the resale plan went into effect in dealing in sanitary enameled iron ware, did you not? A. Less trouble.

Q. What had your trouble before that been?

A. Our troubles were principally because we went out and bought anything that we could get at any old price, and we did not care but sent it out. After the resale plan went into effect we bought nothing but strictly first-class goods.

Q. Did the difficulties which you had previous to the resale plan went into effect yield you more or less profit than after the resale plan went into effect? 3

A. I made more money out of enameled ware during the resale plan, because I had a great deal less trouble with the goods that I sold.

Q. How does that affect the question of the amount of money that you made?

A. I can explain it this way: I have on hand at the present time quite a large amount of enameled ware which I bought previous to the resale agreement, which is still in my warehouse and which I would not put out during the life of that resale agreement. It is still there, but I am selling it at the present at almost any price I can get. During the resale agreement I tried to buy the best goods I could get and by doing that I saved myself an immense amount of trouble and annoyance and the trouble is where we lose all our money. The profit on enameled ware at any time is not very large, and if you have any trouble with it in replacing it and regrading it and sending it to the warehouse again, the profit is whacked off two or three times over. 4

Q. So you sustain a loss?

A. The goods are sold at a loss rather than a profit.

1 Q. So that the profit you made during the period of the resale plan is irrespective of the price, but due to the reasons that you mentioned, is that correct? A. Yes, sir.

Q. Was there any competition between you and other jobbers in your community during the period of the resale plan?

A. Just as much as ever.

Q. How did that come about?

A. Simply because if you took a lavatory or bathtub or any article of enameled ware, you had to put trimmings to it too, so that the goods can be sold at any price a man wants to sell them for.

2 Q. Was the plumber obliged to sell his goods to the customer at that price under this resale plan? A. No, sir.

Q. The goods you sold were purchased from the licensed manufacturers, were they not? A. Yes, sir.

Q. Mr. Boswell, during the time of the resale plan did you sell as many goods before as after? Did the plumbers buy as many goods?

A. I don't know whether there was any difference. I did not have that in my mind.

Q. No plumber ever refused to buy because of the existence of the resale plan, as far as you know?

3 A. No, sir; I did not notice anything about it.

Q. Among the losses that you sustained, did not some arise in this way: After a piece of sanitary enameled ware was installed, instead of taking it back they sometimes left it installed and made a claim against you for damages or for a reduction in price?

A. That is often the case. Plumbers will take advantage of you every day in the week. They will beat you out of your eye teeth. If a fellow had false teeth, he would steal them from you. They are worse than the lawyers. He never puts his hand in his own pocket; he always puts it in somebody

4 else's pocket; the plumber does both.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Who were the chief manufacturers who supplied you with enameled ware in June, 1910?

THE WITNESS: Do you mean June, 1910, or previous to June?

Mr. GROSVENOR: Before you signed the contract?

A. Any fellow that I could find that was gol-darned near

bankrupt that I could get goods from. They would come around and say, "Boswell, I have two or three carloads of goods and you can have them for so much cash." That was the fellow that I was always looking for. 1

Q. Now, to get it more specific, will you name the manufacturers from whom you bought the largest amount of enameled ware, generally, before June 1st, 1910?

THE WITNESS: You don't want me to answer that question, because you want to be fair and honest and if I answer that question several of my best friends that I helped to keep out of bankruptcy would get in trouble. I dare not say so to you, though, because they will say it is a breach of confidence if I tell you. They are on that list, though. 2

Q. This is nothing of a private character; I want to have the names of the prominent manufacturers from whom you were buying in June, 1910? A. I would rather not.

Q. Were you buying from the Standard Sanitary Manufacturing Company?

A. Yes, sir. Please don't ask me any more.

Q. Did you buy most of your supplies from the Standard Sanitary Manufacturing Company? A. Yes and no. 3

Q. Which?

A. Both. I cannot answer that question honestly and use either word.

Q. Did you buy in large amounts from them?

A. Well, they never needed money very bad, and when I could not get some other poor fellow that needed money, I would go to them.

Q. In June, 1910, with what manufacturers did you sign the contract?

A. I want to answer that this way: I was going to New York one morning in a hurry. The President of our concern said: "Say, Tom, here are some contracts for enameled ware, will you sign them?" And I said: "Mr. Aird, I haven't got time, but sign all of them." 4

Q. What is your position with the Aird-Donn Company?

A. Secretary.

Q. Are you in charge of the selling end?

A. I do pretty nearly everything.

Q. With whom did you sign these license contracts?

A. I could not say.

1 Q. Did you sign with the Standard Sanitary Manufacturing Company? A. I could not say.

Q. Did you sign with A. Weiskittel and Son Company?

A. I could not answer.

Q. Did you sign with the Barnes Manufacturing Company? A. I cannot answer.

Q. Did you sign with the Cahill Iron Works?

A. I cannot answer.

Q. Can you give me the name of one manufacturer with whom you signed in June, 1910?

A. I cannot. Mr. Aird signed all the contracts that came

2 in.

Q. Can you give me the names of any manufacturers from whom you bought sanitary enameled iron ware after June 1st, 1910, until January 1st, 1911?

A. The Standard Sanitary Manufacturing Company; I think the Cahill Iron Works; I believe the Day-Ward Company. I believe I bought samples from two or three others who came in and said that they had something new. Anybody who said that they had something new I would buy samples from.

Q. Did you receive, in June, 1910, a letter from a number

3 of manufacturers stating that it would be necessary for you to execute these contracts, they being enclosed, before they could sell you licensed sanitary enameled ware?

A. I don't remember seeing such a letter. We may have received them, but I do not remember.

Q. Are you able to give the name of any other manufacturer with whom you signed a contract in June, 1910?

Mr. NOBLE: The witness said that he did not sign any. He said they were signed by Mr. Aird.

Q. I mean by your Company?

A. I cannot, because I was not there.

4 Q. Did you understand in June, 1910, that in order to obtain sanitary enameled iron ware it was necessary for you to sign one of these contracts?

Mr. NOBLE: I object to that question. The witness does not know of his own knowledge.

A. I cannot answer that question to you directly yes or no.

Q. What is the best way you can answer?

A. I stated to you previously, Mr. Aird said that there were some contracts there, and I said, "Sign them." Every person I ever bought enameled ware from, I believe, was on that list, and whether it was important to sign it or not never once entered my mind. 1

Q. Now, after June, 1910, in making sales to your customers did you observe this price list?

A. I want to answer that; I am just tickled to death to answer this question. That book came into our office. I looked it over and I said that it did take me a good many years to learn a portion of the Bible and that I never could learn that book, and I said to the auditor, "You go through our catalog and take every fixture we sell and give me the net cost on that fixture and from that I will compile the selling sheet at which our salesmen will sell the goods;" and from that I made two or three prices. There was not a salesman for the Aird-Donn Company who could carry that book. It was too big and too voluminous. 2

Q. Now, you, like other jobbers, have a catalog, do you?

A. Yes, sir.

Q. Then when this list came in you had your auditor calculate the net cost, you say, of the articles in your catalog?

A. Yes, sir.

Q. In calculating that net cost, did you use this price book? A. Yes, sir. 3

Q. Then from that you say you made a selling sheet?

A. Yes, sir.

Q. That is, you mean the price at which you sell was calculated from this book? A. From my cost.

Q. And from this book? A. No, sir; from my cost book.

Q. How was the selling sheet calculated?

A. From my cost sheet.

Q. Did you use this book? A. No, I got my cost—

Q. You got your cost from that?

A. Yes, sir; and from my differentials. 4

Q. Where did you get your differentials?

A. From that book (indicating).

Q. Then the prices at which your salesmen sold were ascertained from this book?

A. No, sir; from my selling sheet, and they were obtained from my cost book.

Q. Did you ever attend any meeting—

1 A. No, sir; not a meeting. Fellows come up here and lie like troopers, and try to make you believe them—

Q. Well, did you attend any meetings of jobbers in plumbing supplies in the early part of June, 1910, at which resale prices were discussed? A. No, sir.

Q. You were at the Toledo meeting? A. No, sir.

Q. Or at the Niagara Falls meeting? A. No, sir.

Q. Where do you sell your goods?

A. New York, Vermont, Massachusetts, Rhode Island and Connecticut. Those States principally.

2 Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

CHARLES C. STRINGER, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Please state your full name, residence and occupation?

A. Charles C. Stringer; Chicago; Secretary of the Re-
3 public Manufacturing Company.

Q. Did your Company sign, during the year 1910, a jobber's license agreement with Mr. Wayman? A. We did.

Q. Did you receive a letter at any time from the Department of Justice asking you if you were forced to sign that agreement? A. We did.

Q. Were you forced to sign that agreement?

A. We were not.

Q. Did you sign it with a number of licensed manufacturers? A. Yes, with about six or seven.

Q. Why did you sign it?

4 A. Because we felt the license agreement would remedy a number of serious conditions that were prevailing on the enameled ware that was being sold at that time. They had been gradually growing worse for the last three or four years.

Q. Did that agreement remedy those conditions?

A. Yes, sir.

Q. What were those conditions?

A. Well, they had reached the point where thirty-five or forty per cent. of the enameled ware was going bad and was

being sold for first class. It was sold A first and upon examination was found to be B quality; this was one of the main reasons why we signed. 1

Q. You were buying it as A quality and on examination it proved to be B quality? A. Yes, sir.

Q. Now, after the resale agreement, as it is called here, went into effect, were the goods which were called guaranteed goods better than before? A. Decidedly better.

Q. How about the seconds?

A. There were no seconds. They were eliminated from the market.

Q. So you dealt in a better quality goods after the resale plan went into effect? 2

A. It is, and we knew what we were buying, and we got what they were sold to us as.

Q. So the ultimate user got what he thought he was going to buy? A. Exactly.

Q. Did your trade change, increase or decrease, after the resale agreement went into effect?

A. Our trade remained the same, if anything a slight increase. Our business has been increasing right along.

Q. Were you able to sell in any different parts of the country than previously? 3

A. Yes, sir; we went into territory that we had never gone into. Under the resale plan we sold in places 2000 miles away from Chicago.

Q. And that was due to the equalization of the freight rate what was called the Zone System?

A. The Zone System; yes, sir.

Q. That enabled you to compete with jobbers out in Arizona, didn't it? A. Yes, sir.

Q. Whereas theretofore you had not been able to do that?

A. Yes, sir. I do not believe there are any jobbers in Arizona, but we were able to compete with other jobbers selling out there. 4

Q. Did you notice any difference in the business which prevailed before the resale agreement went into effect and afterward?

A. We thought there was just as keen competition after it went into effect, but there were other fixtures that had to be figured.

Q. As far as the sale of licensed sanitary enameled ware was concerned, you were not obliged to sell the other goods

1 used in connection with sanitary enameled ware such as trimmings, at any special price?

A. No, sir; we sold at just the same price as before.

Q. How about the trade since January 1st, 1911, that is the condition of the goods?

A. We find conditions worse now than before. Out of a recent purchase of $4,000 worth of enameled ware we have $1,500 worth rejected, and the manufacturer made a fifty per cent. reduction asking us to dispose of it for him.

Q. The plumber, so far as you were concerned, was not obliged to sell the goods to the public at any fixed price under
2 this resale plan, was he? A. None whatever.

Q. Did you have less or more trouble from goods which you had sold, sanitary enameled iron ware, after the resale plan went into effect?

A. We had less trouble. We found all the manufacturers were striving to improve the quality of the enameled ware which they were turning out.

Q. Did you make more or less money after the resale plan went into effect than you had before?

A. We made more money; we consider that we had less expense in changing the enameled ware.

3 Q. And that was without respect to the price at which you bought it or sold it? A. Yes, sir.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. From whom did you obtain the largest amount of your sanitary enameled iron ware prior to June, 1910?

A. The National Sanitary Manufacturing Company; the McCrum-Howell Company; the Standard Sanitary Manufacturing Company; the United States Sanitary Manufacturing Company; L. Wolff Manufacturing Company; and the Cahill Iron Works.

4 Q. From which of those six did you obtain the most?

THE WITNESS: Prior to June, 1910?

Mr. GROSVENOR: Yes, prior to the resale plan.

A. I could not just say, but I think prior to the resale plan—it would be hard to tell; some of the smaller manufacturers were the cheapest—

Q. Well, did you receive about the first of June, 1910, any of these jobber's contracts from the various manufacturers you have mentioned? Do you remember that? A. Yes, sir.

Q. A letter accompanied the contracts stating that it was necessary for you to sign this contract in order for you to obtain sanitary enameled iron ware which was licensed— 1

A. I don't recollect the letter, but I know the contracts came in, and as fast as they came in we signed them and fired them back.

Q. Did you understand that it was necessary for you to execute or sign these contracts in order to obtain licensed sanitary enameled iron ware?

Mr. NOBLE: I object to the witness' understanding.

A. We never had any understanding. We could not sign those contracts fast enough, though, because as soon as they came in we signed them and sent them out, because we thought they would be of great benefit to us. 2

Q. How large a business in sanitary enameled iron ware does your Company do?

A. In the neighborhood of $150,000 or $200,000 worth annually.

Q. This purchase of $4,000 worth which you testified to, was since January, 1911, was it, from those six manufacturers you have named?

A. It was from one of those manufacturers.

Q. Do you sell outside of Chicago? A. Yes, sir. 3

Q. You sell outside of the State of Illinois? A. Yes, sir.

Q. In making your sales during the resale period did you observe this price list which is known as Petitioner's Exhibit No. 133?

THE WITNESS: On enameled ware?

Mr. GROSVENOR: Yes.

A. Yes, sir; we did.

Q. And the price at which you bought from the manufacturers with whom you signed contracts was governed by this list also? A. Yes, 4

Q. You sold, then, in different zones, didn't you, besides the zone in which Chicago was situated? A. Yes, sir.

Q. Then, the price at which you sold in the different zones was always governed by this book?

THE WITNESS: "Is" or "was?"

Mr. GROSVENOR: Was, during those six months?

A. The freight rate governed the price on the enameled ware billed in the different zones.

Q. You calculated what the price in any particular zone was by referring to the discounts as set out for that zone in this book?

A. Yes, because we did not go to the trouble of figuring out the freight. We took it from the book and that figured it out for us.

Q. Were you present at any meeting of jobbers in 1910, at which this resale agreement was discussed?

A. No, sir; I was not.

Q. Were you present at the Toledo meeting? A. No, sir.

Q. Did your Company sign these agreements about the first of June, 1910?

A. Just as soon as we received them we signed them.

Q. You testified that there was no difference in competition between the jobbers after you signed the agreement. Is it not a fact that the price at which every jobber sold that signed the agreement was determined by this price list?

THE WITNESS: Will you read the question, please.
The last question was then read by the stenographer.

A. I cannot tell what the other jobbers sold by. We made our prices according to that book.

Q. If all the jobbers who signed this contract made their prices according to this book, wouldn't that eliminate all competition?

Mr. NOBLE: That is a hypothetical question. The witness need not answer.

A. I couldn't tell that. I don't know what the other jobbers were doing.

Q. You testified as to competition, on direct examination, and—

A. I said there was just as much competition after the resale price went into effect as prior to it.

Q. That is in getting business?

A. In getting business and in prices.

RE-DIRECT EXAMINATION BY Mr. NOBLE:

Q. Do you know of any reason why the large part of the enameled ware which was sold to you was said to be defective? Did you have it explained to you?

Mr. GROSVENOR: That is this $4,000 bill?
Mr. NOBLE: Yes.

A. I understood the manufacturer was experimenting with a new grade of enameling powder. 1

BY Mr. GROSVENOR:

Q. Who gave you this information?

A. The manufacturer.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

FREDERICK W. ZANDER, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows: 2

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Please state your full name, residence and occupation?

A. Frederick W. Zander, Buffalo, New York; President of the Zander Plumbing Supply Company.

Q. Do you deal in plumbing supplies? A. Yes, sir.

Q. Does that include sanitary enameled iron ware?

A. Yes, sir.

Q. Did you sign a license agreement relative to the sale of sanitary enameled iron ware in June, 1910? A. I did. 3

Q. Were you forced to sign that? A. We were not.

Q. Did you get a letter from the Department of Justice signed by Mr. Joseph Darling of the Bureau of Investigation, inquiring whether you were forced to sign a license agreement? A. I do not recall it.

Q. Why did you sign this license agreement?

A. Because we believed in a fair adjustment of prices, and we did that because we knew the people we were doing business with, as it later turned out to be.

Q. Had the quality of sanitary enameled iron ware been satisfactory to you previous to the contract going into effect? 4

A. We are a new concern, just having gone into the business a year ago last January, and we had not received much goods.

Q. Has the quality of sanitary enameled iron ware which you have purchased since January, 1911, been what it was from June 1st, 1910, until December 31st of last year?

A. I cannot say as to that. It has not been a long period and we had a very large stock on hand at the time.

1 Q. And you have not been able to work it off yet?

A. No, sir.

Q. You were not forced to sign this agreement, but signed it because you thought it was a good thing to do?

A. Yes, sir; we were not forced to sign it.

Q. And you are familiar with the business through having been connected with some sanitary manufacturing company?

A. With the L. Wolff Manufacturing Company for fifteen years.

CROSS EXAMINATION BY Mr. GROSVENOR:

2 Q. Who were the manufacturers that you were buying from in June, 1910?

THE WITNESS: In June, 1910?

Mr. GROSVENOR: Yes, before you signed the agreement?

A. We have confined our purchases almost entirely to the Standard Sanitary Manufacturing Company, with the exception of some fixtures and goods that we bought from Kohler and one or two others.

Q. When did you buy from Kohler?

3 A. We bought from Kohler in February and March and some of the deliveries were made in May and July.

Q. 1910? A. Yes, sir.

Q. But your largest purchases were from the Standard Company?

A. From the Standard Sanitary Manufacturing Company.

Q. Are you a jobbing house of the Standard Sanitary Manufacturing Company? A. No, sir; we are not.

Q. You have no connection with it?

A. Absolutely no connection, and under no obligations to them in any way.

4 Q. Are they interested in your business? A. No, sir.

Q. Or are any of their officers? A. No, sir.

Q. You testified on direct examination, "We signed it because we believed it would result in a better adjustment of prices." What did you mean by that?

A. I meant by that that I knew that some of the enameled ware being put on the market was not made as good, because it could not be furnished at the prices prevailing, and we felt if the manufacturers got the price they were entitled to that they would improve their goods.

Q. In other words, the license agreement provided for better prices to the manufacturer, in your opinion? 1

A. In my opinion, yes, sir.

Q. I thought that is what you said.

A. I think it would because they would have less trouble with their ware.

Q. Wasn't there any increase in prices?

THE WITNESS: On what, enameled ware particularly?

Mr. GROSVENOR: That is what we are talking about in this examination. 2

THE WITNESS: Thank you.

Mr. GROSVENOR: Will you read the question?

The last question was then read by the stenographer.

A. There was. Pardon me, there was an increase on some of the goods, and some prices were lowered. As I said before there was a fair adjustment of prices, as we thought, which made it possible to give the public good goods at a fair price.

Q. In June, 1910, did you receive a series of letters from the different manufacturers enclosing printed contracts?

A. I do not recall having received any letters, but we received contracts, quite a number of them. 3

Q. With what companies did you sign?

A. With the L. Wolff Manufacturing Company, the Standard Sanitary Manufacturing Company, the United States Sanitary Manufacturing Company, the Cahill Iron Works and perhaps one or two others. I am not certain about that.

Q. Did you understand that it was necessary for you to execute or sign those contracts in order to obtain licensed sanitary enameled iron ware?

Mr. NOBLE: I object to what the understanding was. Counsel has no objection to inquiry by the Government as to the witness' knowledge. 4

Mr. GROSVENOR: Just read the question, please.

The last question was then read by the stenographer.

A. I did not give it a thought, as I explained to you before, we signed because we believed it to be a good proposition.

Q. After you signed the contracts did you sell your ware according to the prices established by this price list?

A. We did, the enameled ware.

Q. Your enameled ware business extends outside of Buffalo? A. It does; yes, sir.

Q. Through what places?

A. Through New York State, part of Pennsylvania, and into Vermont and Connecticut.

Q. Were you present at any meetings in the early part of June, 1910, when this license agreement was discussed?

A. Yes, sir.

Q. Where?

A. I was present at a jobbers meeting at Niagara Falls.

Q. In April?

A. Yes, sir; but I do not remember anything about the resale prices being discussed at that time. In fact, I was only there half an hour.

Q. At which meetings were you present where it was discussed?

A. Well, there were two or three committees, but I cannot remember which one; this was the formation of a committee.

Q. At a meeting in New York?

A. No, sir; at Niagara Falls. Which do you refer to?

Mr. GROSVENOR: I am trying to find out at what meeting you were present at which this resale plan was discussed.

Mr. HEATH: Do you mean the licensing agreement or the resale agreement?

Mr. GROSVENOR: I mean the resale agreement which is the subject matter of this suit. My question is confined to the enameled ware business.

THE WITNESS: Exactly.

Q. At what meeting of jobbers or manufacturers were you present? A. At Toledo.

Q. In June? A. Yes, sir.

Q. That was the Central Supply Association meeting?

A. The Central and Eastern Supply Associations meeting.

Q. Were you present when this discussion was going on pro and con with reference to the license contracts?

A. I heard something of it. I was not present all the time.

Q. Whom did you hear speak in favor of it? Did you hear Mr. Torrance speak in favor of it?

A. No, I do not recall that I heard Mr. Torrance.

Q. Or Mr. Wolff? A. I heard Mr. Wolff say something.

Q. Was he in favor of it? A. I don't remember. 1

Q. Did you hear Mr. Clifford?

A. No, sir; Mr. Clifford was not present.

Q. Now, can you remember anything about what was said?

A. The resale was discussed in a general way and a great many of the jobbers felt that something should be done to improve the conditions. The discussion was along general lines.

Q. The conditions as to prices were to be improved?

A. Improve the conditions as to quality, particularly.

Q. And also as to prices? A. Yes, sir; also as to prices.

Q. The resale arrangement had in mind two things, didn't it, prices and quality? 2

Mr. NOBLE: I object to the question. This witness testified from his own knowledge, and he cannot testify from the knowledge of other people. It is not proper to put the question in such a form.

Mr. GROSVENOR: Testify from your own knowledge only. Wasn't one of the advantages the regulation of prices?

A. I don't know anything about that. Haven't I stated that I thought the resale agreement was a good proposition because it would be possible for the manufacturers to give us better goods and the customer would be benefited as well as anybody? 3

Q. Where does the jobber come in on the advantages?

A. He does not have the trouble with the returned goods and trouble with replacing and so on. Profits on enameled iron ware are very, very small and are today; there is less profit than you find in any other line.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

4

STANLEY E. HUNTING, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Will you please state your full name, residence and occupation?

1 A. Stanley E. Hunting, President and Manager of the Hunting Company; residence, Watertown, New York.

Q. Does your Company deal in plumbing supplies?

A. It does.

Q. Including sanitary enameled iron ware? A. Yes, sir.

Q. Did your Company sign one of these agreements during the year 1910 with licensed manufacturers of sanitary enameled iron ware? A. Yes, sir.

Q. Did you receive a letter at any time from the Department of Justice signed by Mr. Joseph Darling, asking if you were forced to sign those contracts? A. Yes, sir.

2 Q. Were you forced to sign them? A. No, sir.

Q. Why did you sign them?

A. Well, we thought it to the best interest of the jobber, the plumber and the consumer.

Q. Now, will you explain yourself a little more fully, giving your reasons for what you have just said?

A. Well, the enameled iron ware was subject, prior to June 1st, to being defective lots of times, and we used to get a great many labor charges and goods coming back made the profits comparatively small, and we felt that if the manufacturer would give us a better class of goods that we would

3 perhaps have somewhat better net results ourselves also.

Q. After the resale plan, as it is called here, that is this jobber's license agreement, went into effect, did the quality of the sanitary enameled iron ware which you purchased improve? A. In my judgment it did.

Q. Did you have as many difficulties or complaints from your purchasers after that as you had had before?

A. No, we did not.

Q. How about seconds?

A. Well, we did not handle any seconds or buy any seconds after the resale arrangement went into effect.

4 Q. What do you understand in the trade as an A article or a B article or a second?

A. Well, we understand an A article to be an article absolutely guaranteed to be perfect, and a B article to be one that is imperfect.

Q. Since the first of January, 1911, what can you say as to the quality of enameled ware which has been put on the market by some manufacturers with whom you previously dealt?

A. In my judgment it has not been as good as it was prior to that time. 1

Q. Did you notice whether there was any difference in competition between you and other jobbers after the resale plan went into effect than before? A. No, sir.

Q. What? A. No, no difference.

Q. Was there anything in your license agreement which required you to charge any specified prices for the trimmings, which were sold in connection with an article of sanitary enameled iron ware? A. No, sir.

Q. So you sold those at any price you pleased?

A. Yes, sir. 2

Q. Just as you had done before and are doing now?

A. Yes.

Q. Since the first of January has there been any restriction upon the sale or terms of sale of licensed sanitary enameled iron ware which you purchased from licensed manufacturers? A. Not to my knowledge.

Q. Were you able to make any more out of sanitary enameled iron ware after the resale plan went into effect?

A. Yes, sir.

Q. To what was that due?

A. Well, it was due to our having less trouble and annoyances and goods coming back and bills from plumbers for labor charges, defective goods, all that cost money. 3

Q. So that the extra money that you made as compared with what you had done prior to the resale plan came into effect, was brought about by these conditions, irrespective of the price that you had to pay for the ware or at which you sold it, is that correct? A. That is correct.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Hunting, who were the manufacturers with whom you did the most business in sanitary enameled ware before June 1st, 1910? 4

A. Well, I think we did business with five or six manufacturers.

Q. Will you name them?

THE WITNESS: When?

Mr. GROSVENOR: The early part of 1910.

A. The National Sanitary Manufacturing Company; the Day-Ward Company; the Cahill Iron Works, and a little

1 business with the L. Wolff Company and with the Standard.

Q. Was ninety-five per cent. of your business with those companies—I am confining my questions to the enameled ware business entirely?

A. Yes, I understand; I should say it was.

Q. Did you receive during the early part of June a series of contracts from these various manufacturers.

A. I believe we did; yes, sir.

Q. Did you receive with them a letter like this letter which is Petitioner's Exhibit No. 166, which I now show you?

A. Well, I don't remember such a letter.

2 Q. Did you sign those contracts with these companies, then, in June?

A. I would not say whether it was June or July. I would not say positively that we ever signed them all, but we signed two or three.

Q. From June, 1910, to January, 1911, did you confine your purchases to the companies with whom you had signed contracts?

A. Yes; still, I am not sure that we signed contracts with the L. Wolff Company or the Cahill Iron Works. My judgment is that we did not, but we got some goods from both

3 concerns. I am not sure that we signed contracts with those two.

Q. Do you sell goods outside of New York?

A. Yes, sir; in Vermont and Pennsylvania.

Q. In making your sales from June, 1910, to January, 1911, did you observe the prices established by this price list which is Exhibit No. 133?

A. Well, I would not say that we did. We have a large catalog and a discount sheet applying to it which covers the enameled ware and the fixtures thereon. Our prices are made to the plumbers on the fixture complete. Those prices

4 were gotten up by the sales manager in Rochester, and we make our selling price based on the cost with a reasonable profit.

Q. Did you make the price on the resale in June, 1910?

A. I couldn't say we did.

Q. Do you know whether your sales manager used this price list in making up those prices?

A. He might have used that as a basis of cost.

Q. Were you present at any meetings in 1910, of jobbers at which this resale plan was discussed?

A. I was at a meeting in Niagara Falls. Whether it was a jobber's meeting or a jobber's and manufacturer's meeting, I am not sure which. I think it was jobbers. 1

Q. Were you present when the resale was discussed?

A. No, I was there only a short time.

Q. Is not the stability of prices one of the advantages of this licensing arrangement?

A. Yes, I think it is to a certain extent.

Q. That is, all the manufacturers give you the same price?

A. Yes, on the same class of goods, from the same equal quality.

Q. Then the price list provides that all the jobbers shall sell the same class of goods at the same price, does it not? 2

Mr. NOBLE: I object to the question. The contracts speak for themselves.

THE WITNESS: I could not state what the other jobbers charge.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

MARTIN A. SISK, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows: 3

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Will you please state your full name, residence and occupation?

A. Martin A. Sisk; president of the Sterling Sanitary Manufacturing Company, Pittsburgh.

Q. Did your company sign a resale contract or contracts in June, 1910, relative to the purchase of sanitary enameled iron ware? A. We did. 4

Q. Did you sign it with more than one company?

A. Yes, sir.

Q. Did you receive a letter from the Department of Justice asking if you were forced to sign those contracts?

A. Yes, sir.

Q. Were you forced to sign them? A. No, sir.

Q. Why did you sign them?

A. Because we considered it was a benefit to the jobbing

1 interests, to the plumbing trade and to the public, in this way: Previous to the resale agreement I venture to say that the majority of our sales of enameled iron ware were seconds. Now, my experience has been in selling seconds that there is no bottom to the prices. One man may have a good run of seconds and another man a poor line of seconds. The trade in buying those goods only look at the prices irrespective of what the stock is, so I venture to say that our profit on those seconds was practically nothing. I don't think it paid us to handle them. That condition prevailed in Pittsburgh, to my knowledge, for six or eight years. Now, after the resale agree-
2 ment or schedule went into effect those seconds were eliminated from the market entirely and the result was that we were selling a better class of goods, and while there would, of necessity, be a slight advance in price, that advance was made up for by the quality of the goods, so that I think the trade generally was benefited. They were getting better goods for their money.

Q. Did you have any trouble with plumbers making claims on you for defective ware before the resale plan was put into effect? A. That was a common occurrence.

Q. What happened after the resale plan was put into
3 effect?

A. We did not have that trouble and we have not had it up to this date.

Q. What have you to say as to the quality of the guaranteed ware, or what was called Class A ware as to the time between June 1, 1910, and the previous period?

A. There is no difference in Class B ware—

Q. I mean between Class A anterior to the time of the resale plan and subsequent to it?

A. Well there was naturally a tendency on the part of the manufacturers to better their ware, for this reason: It was
4 a question with the jobber of getting the best ware he could, the prices being uniform, so the tendency on the part of all the manufacturers was to make better ware, which I believe they all did.

Q. Mr. Sisk, I would like to call your attention to the comparison between the former selling prices, that is previous to the license agreement going into effect, and subsequent thereto, on some types of ware. For example, a lavatory; have you any knowledge as to the difference in price—

Mr. GROSVENOR: Will you specify what lavatory? 1

Q. (Continuing): Between the time anterior to the resale price and during the resale period and specify the lavatory to which you refer, take for example any lavatory similar to the Standard No. 514?

A. That is a good illustration, because that is one of the very stable lavatories in the line. I would say on that particular fixture, if my memory is right, there was a slight reduction in the price.

Q. Do you remember what the difference was?

A. Well, probably five per cent., that is at least as far as our selling price was concerned. 2

Q. Your selling price to the plumber? A. Yes, sir.

Q. That is, it was five per cent. less during the resale plan, than previous? A. Yes, sir.

Q. Take the non-guaranteed tub, what was the difference in those; take the Standard tub?

A. I would judge the price on that was about the same, if anything, it was a little less.

Q. Take for example the sixth, size 18 by 30?

A. Our prices were never affected on that; if anything, we sold ours for a little less afterwards than before.

Q. Are these illustrations which I have given fairly indicative of the general line of the trade? 3

A. I would say that taking conditions all around our price was, if anything, to the plumber a little lower, for this reason: The resale schedule we always considered our minimum selling price, not necessarily our selling price, but the minimum selling price, because the margin of profit between the cost of and the resale schedule is certainly not too great. We would not want to transact all our business at that margin of profit. If we did, we would go broke.

Q. Mr. Sisk, did you make more or less money under the resale plan than you had been doing before? 4

A. Well, I think we made more money.

Q. Why?

A. For this reason: Previous to the resale plan a large percentage of our business, in fact probably the majority, was done in Class B ware, that was the general condition prevailing more particularly in Pittsburgh, I think. On Class B goods it has been an invariable rule that they are sold at an extremely low margin of profit. I do not believe any jobber

1 could say he really made any profit on them. A good piece of goods yields a fair margin. If we can do business on first-class goods we could make more money if we did less business.

BY MR. HEATH:

Q. During the time the resale plan was in existence, when you say you had less trouble by reason of defective goods, reduction of prices on that account and the return of the goods, now did that or not increase the net amount that you received on the invoice so you were enabled to reduce the prices on the invoice?

2 Q. Most assuredly. Previous to the resale schedule going into effect, as a rule, the goods we got back were Class B's. Invariably they were a dead loss to us so that previous to that time if a fixture went bad the loss consisted of the original cost plus, in a great many cases, the freight charges on the return.

BY MR. NOBLE:

Q. As to the competition, both before and after the resale plan went into effect, among the jobbers, how was that affected?

3 A. It was not affected in any way, for this reason: It was about ten per cent. of all—that is, the plumber will place his contract for the material of an entire building or two or three or ten buildings, as the case may be, so that even assuming that there is no competition on the enameled ware, by the time the competition on the other 90 per cent. of the material going into that building was considered, I would say that the conditions are not altered at all.

CROSS EXAMINATION BY MR. GROSVENOR:

Q. Mr. Sisk, you observed this price list in making your
4 sales after you signed the resale agreement, did you not?

THE WITNESS: As a limit price?
MR. GROSVENOR: As a limit price.

A. Yes.

Q. That is, you would sell higher, if you could?

A. Yes, in fact we practically never sold goods at a less margin of profit than shown on that price list.

Q. This book also covered the price at which you bought it, did it not? A. Yes.

Q. So if you wanted to increase your margin of profit you would raise your resale price? A. Exactly, yes. 1

Q. And did not all jobbers who signed the resale contract sell according to this price list?

A. I could not answer that. I don't know. I know what we done.

Q. You understand that was one of the terms of the contract that you signed, that you should observe the terms here of this price list?

Mr. NOBLE: I object to the witness testifying what the contract means. It is in writing and it speaks for itself and has been introduced in evidence by the Government. 2

Mr. GROSVENOR: Read the question, please.

The stenographer then read the last question.

Mr. GROSVENOR: Do you understand the question?

A. Yes, I understand the question. I would answer it this way: Even without the resale agreement we still would not sell at a less margin of profit.

Q. Is not this price list a part of the contract which you signed? A. I suppose it was, yes.

Q. You said that the enameled ware was 10 per cent. of the jobber's business? 3

A. I think more, but that much to my experience.

Q. And you said that because it was only 10 per cent. he was not much affected? A. Yes, sir.

Q. If every other article making up the other 90 per cent. was fixed by a price list the same as the 10 per cent., would not the competition be affected?

Mr. NOBLE: I object to that question. It is purely hypothetical. You do not have to answer that question, Mr. Sisk.

THE WITNESS: I could not answer it, because there is no such condition prevailing. 4

Q. With what manufacturers were you doing business before June, 1910?

A. Principally the Standard Sanitary Manufacturing Company.

Q. Ninety-five per cent. of your business was with that company? A. Oh, yes, possibly.

Q. Did you receive a letter similar to Petitioner's Exhibit

No. 166 from them in June, 1910, saying it was necessary for you to execute this contract in order to obtain sanitary enameled iron ware?

A. Well, now, my best answer to that would be this: I recall getting a letter. I cannot recall this last sentence (indicating). My best answer would be this: We received that contract very early in June, I would say about the sixth or seventh, and I held that over possibly a week before we signed it. In the meantime the Standard Sanitary Manufacturing Company was delivering goods to us. They make deliveries practically every day, so it was not fair to assume that we could not get goods unless we signed it, because goods were being delivered to us.

Q. When did you sign the contract?

A. I judge about a week after it was sent to us, about the 14th.

Q. Did you sign with anybody else? A. Yes, sir; later on.

Q. With whom?

A. The United States Sanitary Manufacturing Company; the Barnes Manufacturing Company, and the Cahill Iron Works, although we did not do any business with the latter.

Q. Did you confine your purchases from June to these manufacturers that you have named?

A. Not entirely so.

Q. I mean your business in enameled iron ware?

A. Not entirely so.

Q. Whom else did you buy from?

A. We had one instance where we bought from an outside firm.

Q. Is that the only exception? A. Yes, sir.

Q. So, with the exception of one order, you bought from the companies with whom you signed contracts? A. Yes.

Q. Will you find that Standard No. 514 in this price list, the price of which you testified was reduced by the price list?

A. This is it (indicating). There are various sizes of that fixture. The ordinary or popular size is the 18 by 24 by 10.

Q. Just read the heading.

A. (Reading): "Lavatory, Schedule 4. Page 8; plain flat back style, square or round cornered slab; full apron, 4 inch or over type; prices include concealed hanger."

Q. Which size are you referring to?

A. The principal size is the 18 by 24 by 10; that is the one ordinarily sold. 1

Q. You said there was a reduction; was that of the jobber to the plumber, or from the manufacturer to the jobber?

A. I am only speaking for myself, not for the other jobbers.

Q. When you speak of a 5 per cent. reduction, was that in the price that you make to the plumber or the price from the manufacturer to you?

A. The price that we make to the plumber.

Q. Were you at any meetings in 1910 at which this resale agreement was discussed? A. No, sir. 2

Q. Or at any meetings? A. No, sir.

Q. You were not at Toledo? A. No, sir.

Q. Or any meetings in Pittsburgh? A. No, sir.

Q. Did you have any conversation with Mr. Torrance about the matter? A. No, sir.

Q. How did you happen to come to be a witness?

A. Well, I don't know if it is necessary to answer that or not.

Mr. GROSVENOR: Will you read the question to the witness?

The last question was then read by the stenographer. 3

A. I refer that to Mr. Noble.

Mr. NOBLE: You were requested to come here and testify on behalf of the defendants, were you not?

THE WITNESS: Yes.

Mr. GROSVENOR: Now, will you read the question to the witness and ask him to answer it?

The stenographer then read the question referred to.

THE WITNESS: Well, I would say I was requested to come here by the defendants. 4

Q. Who requested you? A. I won't answer that.

Q. Were you subpœnaed? A. No, sir.

Q. Did one of the officers of the Standard Sanitary Manufacturing Company ask you to come?

A. I won't answer that.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

1 WILLIAM G. CALLOW, a witness of competent age, produced on behalf of the Standard Sanitary Manufacturing Company and others, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. NOBLE:

Q. Will you please state your full name, residence and occupation?

A. William G. Callow; president and treasurer of the Kennedy Company, Cleveland, Ohio.

Q. Did your company sign one or more of the jobbers'
2 license agreements to sell licensed sanitary enameled iron ware under licenses owned by Mr. Wayman during the year 1910? A. We did.

Q. Did you receive a letter from the Department of Justice asking if you had been forced to sign that agreement?

A. Yes, sir; I did.

Q. Were you forced to sign it? A. No, sir.

Q. Why did you sign it?

A. Because my judgment told me it was best for the business.

Q. Specify what you mean?

3 A. I mean prior to the time the resale agreements, so-called, went into effect, the grade of enameled iron ware was such that we had probably 12½ to 20 per cent. replaced. We were forced to cart the goods back and also pay plumbers' labor bills for replacing them. By the resale agreement the manufacturer would get a little better profit and a little bigger price and the probabilities were that he would improve his ware and that we would get better quality goods. Our motives were absolutely selfish.

Q. What were the results following the making of this resale agreement?

4 A. I am satisfied beyond the shadow of a doubt that we had at least 50 per cent. less goods returned under the resale than we did prior to that. That might be brought about from the fact that the people with whom we did business, their prices were alike and we bought our goods from the best manufacturer. We did not skate around to get cheaper goods, because there was only one price, but our expense for replacement was not one-half what it had been.

Q. Did you make more or less under the resale plan?

A. That is problematical, but the natural inference is

that we would make more, when we had 50 per cent. less expense and loss. 1

Q. That is irrespective of price? A. Yes, sir.

Q. What have you to say as to competition between the jobbers at the time previous to June 1, 1910, and subsequent to January 1, 1911?

A. I found no absolute price on a complete fixture, and my experience is that 90 per cent. of the enameled ware is sold as a complete fixture. That is, 98 out of 100 tubs are sold with the trimmings, and our prices were no greater after the resale agreements.

Q. The prices at which you sold this enameled ware with trimmings were the prices which you wished to put on them? 2

A. Yes, sir.

Q. So that as far as you were concerned, competition was as great as previous to that period and subsequent to?

A. I think there was no change in that particular.

Q. During the period of the resale plan did you have any trouble in purchasing seconds?

A. We never sold a second in our market. I have been in business twenty years and we never had a second come in our store.

Q. Was there anything in this agreement or in the practice of it which required you to make the plumber put a particular price on the goods to the ultimate consumer? 3

A. No, sir; he sold the goods at whatever price he saw fit.

Q. What was the result following upon the installation of this resale plan?

A. I believe it was to the advantage of the user as well as to the plumber and the jobber.

Q. Where did the advantage lie to the user?

A. When he bought a tub, for instance, he got a tub that he bought. For instance, I know concerns in this section of the country who used to buy B tubs and then they would put A labels on them and sell them as first-class tubs. Therefore, I think since they cannot do that with the resale plan the ultimate consumer was benefited by the proposition. 4

CROSS EXAMINATION BY MR. GROSVENOR:

Q. What is the name of your company?

A. The Kennedy Company, Cleveland, Ohio.

Q. Are they jobbers of plumbing supplies? A. Yes, sir.

Q. Was that company one of the defendants in the suit

1 brought by the Attorney-General of the State of Ohio to discontinue a violation of one of the laws of that State?

A. Yes, sir.

Q. Were you one of the defendants? A. Yes, sir.

Q. That was what law? A. The Valentine Law.

Q. That was a law with reference to trusts?

Mr. NOBLE: I object to his being asked if it was a law as to trusts.

Mr. GROSVENOR: I am just asking him if he was indicted in a case brought to stop a violation of the anti-trust law of that State.

2 Mr. NOBLE: I object to that unless you will produce the record and I move that the testimony be stricken out.

Q. That suit had relation to the Cuyahoga Plumbing Supply Company?

Mr. NOBLE: I object to that.

A. I had nothing at all to do with it that I know of. I had nothing to do with them then. Since then I bought them out.

Q. Whom did you buy most of your enameled ware from in
3 June, 1910, before this resale plan?

A. The United States Sanitary Manufacturing Company; the McCrum-Howell Company; the Standard Sanitary Manufacturing Company; the Barnes Manufacturing Company; and a number of others in small quantities.

Q. Did you buy 95 per cent. of your enameled ware from those companies? A. I would not say so.

Q. Ninety per cent.? A. I would not say so.

Q. How much?

A. I would say 80 per cent., but that would only be an opinion.

4 Q. You bought by far the larger part from them?

A. Yes, sir.

Q. Did you receive letters and contracts from them in the early part of June, from each of them?

A. We received the contracts.

Q. Did you receive a letter such as this (indicating)?

A. I would not recall it. I was in sympathy with the resale plan and I just signed the agreements.

Q. And did you confine your purchases in the latter part of 1910 to the companies with whom you signed contracts?

A. Yes, sir; with one exception, I think.

Q. With the exception of one purchase, you mean? 1

A. Yes, sir; and that was a company to whom we owed money and we bought from them to balance the account.

Q. Did you observe this price list in making your sales to plumbers?

A. When we got that schedule I handed it to one of the office men and I asked him to make up a price on naked lavatories in keeping with that book when it was sold as an item alone.

Q. You observed it, then?

A. When it was sold as an item alone, but 90 or 95 per cent. 2 are sold complete.

Q. With fixtures? A. Yes, sir.

Q. Did you build them separately?

A. As a rule we build the fixture as a fixture.

Q. Had that been your practice previous to signing the contract, or did you put in lump amounts?

A. Sometimes we did it one way and sometimes another way. There was no well defined policy, as far as I know of, as to that.

Q. Do you sell outside of the State of Ohio? A. Yes, sir.

Q. In what states?

A. Oh, within 150 or 200 miles of Cleveland. We get into 3 New York and Pennsylvania.

Q. Were you at the meeting in Toledo?

A. I was at Toledo, but not at the meeting.

Q. You did not hear anything said on the subject?

A. I was not at the meeting.

Q. Did you have any conferences or discussions with manufacturers at that time with reference to this resale plan?

A. I did not.

Q. Were you at the Niagara Falls meeting?

A. Yes, sir; I was.

Q. What was that called for? 4

A. To organize a jobbers' organization; there was a discussion of about five minutes at the outside relative to a resale arrangement, but I don't think it resulted in any recommendations or suggestions. To the best of my recollection there was no recommendation even given to anybody regarding the resale proposition.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Mr. NOBLE: On behalf of the Barnes Manufacturing Company and the defendants, T. R. Barnes and W. C. Winfield; on behalf of the National Sanitary Manufacturing Company and Frank G. Borden and D. W. Davis; and the Union Sanitary Manufacturing Company and L. C. Huesmann and E. V. Brigham, I desire to say that in view of the statements and warnings given by counsel for the Government to the other witnesses when they were upon the stand in Philadelphia—

Mr. GROSVENOR: Witness defendants, please.

Mr. NOBLE: Don't interrupt my statement—in Philadelphia and Pittsburgh relative to the position in which they would place themselves and in which they did place themselves by going upon the witness stand to testify concerning the issues in this suit, which it was stated by counsel for the Government, as to the matters, transactions and things here alleged and as to which some evidence has been given, were the same or substantially the same as the matters, transactions and things laid in the indictments found in Detroit, on or about December 7, 1910, and in view of the pendency of the criminal proceedings covered by those indictments, these witnesses are unable at this time, on their own behalf and on behalf of the corporations with which they are connected, to fully and freely present their defense to the cause of action alleged in the Petition in this case and covered by the proofs thus far adduced; and I desire to protest that this situation is one brought about by the action of the Government itself which denies them, in effect, their day in court, in which they might properly and fully defend themselves and their property in this matter; and, that upon the advice of their respective personal counsel they will not at this time undertake to testify.

Mr. GROSVENOR: Counsel for the Government objects to this statement as being in any way evidence of the facts contained therein. The proper way to prove unwillingness to testify, of course, is to put the witness on the stand and have him claim his rights, which cannot be done by counsel in the absence of the witness. For this reason counsel for the Government objects to the statement and does not wish to be bound

by any of the allegations of facts therein contained. 1

Mr. J. R. CAREY: I wish to note my appearance as counsel for the National Sanitary Manufacturing Company, Frank G. Borden and G. W. Davis. I wish to state that the situation is this:

These defendants have declined to voluntarily appear here to testify; that they will be present at the final hearing of the case or on any occasion when they are required by due process to appear, but that they will not voluntarily testify at this time.

Mr. NOBLE: I am very happy to add that to my statement so as to cover all the persons about whom 2 I spoke.

At this point the taking of evidence was adjourned until the following morning, at 11 o'clock, at the Federal Building, in New York City.

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4

1 IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

2 New York, N. Y., Post Office Bldg.,

April 20, 1911.

Pursuant to adjournment, the taking of evidence on behalf of the Defendants was resumed this 20th day of April, in New York City, at the Post Office Building, at 11 o'clock A. M., before C. John Beeuwkes, Special Examiner.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
3 HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Standard Sanitary Mfg. Co., *et al.*

EDWIN L. WAYMAN, a witness heretofore produced and sworn, recalled by Mr. Noble, testified as follows:

EXAMINATION BY MR. NOBLE:

Q. Mr. Wayman, have you been a witness heretofore in this case? A. Yes, sir.

Q. By whom were you called? A. By the Government.

Q. Were you subpœnaed? A. Yes, sir.

4 Q. Under what date were you subpœnaed?

A. October 31, 1910.

Q. Have you a copy of the subpœna that was served upon you? A. Yes, sir.

Q. And was it pursuant to this subpœna that you appeared and testified? A. It was.

MR. NOBLE: I would like to have this subpœna (indicating) marked and filed as Exhibit for Identification offered by the defendants, No. 24.

Subpœna referred to was then marked and filed as "Defendant's Exhibit for Identification No. 24." 1

Q. On what day were you subpœnaed?

A. October 31st, 1910.

Q. And did you testify on that day and succeeding days?

A. Yes, sir.

Q. In response to questions addressed to you by the Government? A. Yes, sir.

Q. Where was that? A. In Pittsburgh.

Q. Did you later testify elsewhere?

A. Yes, in Chicago and New York City.

Q. On those occasions were you examined by the Government? A. Yes, sir. 2

Q. Pursuant to this same subpœna? A. Yes, sir.

Q. Did you produce in compliance with the subpœna several documents which you were required to produce thereby?

A. Yes.

Q. And were they or some of them put in evidence by the Government? A. Yes.

Q. Who served the subpœna upon you?

A. A United States Marshal.

Q. Where? A. At my office, in Pittsburgh.

Q. Mr. Wayman, what is your business? 3

A. I am engaged in the sanitary enameled iron ware industry; I might say formerly as a manufacturer and now as the owner of the several patents enumerated in the license agreements; and engaged in the promotion of the use of those patents, in accordance with the license agreements.

Q. When did you begin the promotion or the exploitation of your interest or ownership in those patents?

A. Originally in the early part of 1908.

A. Well, I referred to the time after you got an option upon them. When did you get your options upon those patents? Please state the dates? 4

A. I got the option on the application for the Dithridge patent about December 15, 1909; an option on the Arrott patent, December 28, 1909, and an option on the Lindsay patent early in January, 1910.

Q. When did you begin the promotion of those patents, of your ownership or interest in them?

A. It was early in the year 1908.

Q. I don't think you have understood my question: when

1 did you begin to exploit your interest, your option, your ownership in the patents to which you have referred?

A. In August, 1909.

Mr. NOBLE: Will you please read that question to the witness? Pay attention to the question.

The stenographer then read the last question.

Mr. NOBLE: Scratch the question out. I will read it in another way.

Mr. GROSVENOR: No, leave it as it is.

Mr. NOBLE: Very well.

THE WITNESS: I don't believe I understand it.

2

BY Mr. NOBLE:

Q. When did you get your option on the Arrott patent?

A. December 28, 1909.

Q. What did you do immediately after you got that option?

THE WITNESS: In what respect?

Mr. NOBLE: In respect to the Arrott patent?

A. Why, I saw the Wolff Company with reference to the Lindsay patent that they had.

Q. And did you get an option from them? A. I did.

3 Q. And you had previous to this time, about the middle of December, gotten an option on the Ditheridge patent?

A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Now, having obtained those options, what did you next do?

THE WITNESS: I don't believe I understand your question. In what respect?

Mr. NOBLE: What did you do toward exploiting their use?

4 A. I visited and wrote to the various manufacturers with reference to entering into a license agreement with me under those patents.

Q. Do you recall the date that you began writing or visiting those manufacturers after having obtained the option on the Arrott patent?

A. Why, it was immediately thereafter, the 30th and 31st, I believe.

Q. Of December? A. Yes, 1909.

Q. Now, the patents that you have referred to, do you re- 1
call their numbers?

A. The Arrott patent is 633,941; the Ditheridge is 949,625 and the Lindsay is 939,918.

Q. Now, going back, Mr. Wayman, when did you first begin to attempt to get an interest in the Arrott patent?

THE WITNESS: Are you speaking of previous to the time that I came to Pittsburgh, or thereafter?

MR. NOBLE: The earliest time at which you began?

A. It was early in 1908.

Q. When did you first learn of the existence of the Arrott 2
patent?

A. It was early in 1907 when I was with the Seamless Steel Bathtub Company.

Q. How that did come about?

A. Through a notice that we received from the Standard Sanitary Manufacturing Company, stating that we were infringing on the Arrott patent, which they said was owned by them, and notifying us to discontinue it.

Q. Did they say anything about it having been sustained by the Courts? A. Yes, sir.

Q. What did they say?

3

A. They said it had been sustained against the J. L. Mott Iron Works.

Q. Did you take counsel as to whether the devices that you were using in the Seamless Steel Bathtub Company were an infringement of the Arrott patent? A. Yes sir.

Q. What were you advised?

A. That it was an infringement, and that the Standard Sanitary Manufacturing Company could undoubtedly secure an injunction against us.

Q. Now, in your bnsiness, as a manufacturer of bath tubs at that time, to which you refer, how valuable was the inven- 4
tion covered by the Arrott patent and what would have been the effect if you would have been obliged to discontinue its use?

A. Well, I considered it so necessary in our business that we could not have operated our factory without its use, and we were very much worried about it at the time. In fact, after I took it up with our attorneys, our superintendent tried to find some means to get around it, but he could not get up any device and there were no other devices known at

1 the time. We tried to enamel by hand—in fact I tried it myself, to find out what the difference was between the hand process and the automatic process. The hand process as applied to our bath tubs there, was simply out of the question. We could not get over the metal fast enough to make the tub smooth, and in fact the tub would cool, so that the enamel would not be fused on before it went into the furnace. In fact, the tubs were white —I mean that the enamel would roll down into the bottom of the tub, because the tub cooled so quickly. It was impossible to make a salable bath tub with the hand process.

2 By Mr. Grosvenor:

Q. That is, with the seamless company?

A. I am speaking of the Seamless Steel Bathtub Company.

By Mr. Noble:

Q. What did you do to try to get a license under the Arrott patent? I mean the Seamless Steel Bathtub Company?

A. I wrote the Standard Sanitary Manufacturing Company with regard to securing a license, and I think in reply
3 to that they stated they were not going to license anybody.

Q. When was that, do you recall?

A. Some time in 1907.

Q. Did you have any further negotiations with the Standard Sanitary Manufacturing Company relative to procuring a license under the Arrott patent? A. Yes.

Q. Will you state what those negotiations were?

A. I had spoken to Mr. Day, of the Day-Ward Company about the matter, and in fact I was considerably agitated about it, and I called attention to the fact that although the business could be considerably improved—that is the Sani-
4 tary Enameled Ware business in general—

Q. (Interrupting): What I am talking about now is your negotiations to secure a license for the Seamless Steel Bathtub Company.

The Witness: Well, that led up to it.

Mr. Noble: Oh, I did not mean to interrupt you. I thought you had not understood my question. Go ahead.

A. (Continuing): If the Standard Sanitary Manufactur-

ing Company would license all the manufacturers under the Arrott patent; and Mr. Day and I had several talks about the matter. At a meeting of the Central Supply Association in Chicago, in February, 1908, there were several manufacturers present. I talked with Mr. Day about calling the manufacturers that were there together and going over the matter of getting a license from the Standard Sanitary Manufacturing Company. I called his attention to the licenses that were in existence in the electrical business, and how the electrical industry, in which I had been engaged formerly, was conducted on that basis. The result of that talk was that I stated that I for one was willing to have the Standard Sanitary Manufacturing Company grant us a license--

Q. You mean grant the Seamless Steel Bathtub Company?

A. Yes, the Seamless Steel Bathtub Company a license, and even provide the selling prices at which we should dispose of our goods.

Q. You mean you were so anxious to get the use of the Arrott patent?

A. Yes, yes. I was almost willing to get it on any terms. Several of the manufacturers thought that in taking a license direct from the Standard Sanitary Manufacturing Company it would not be advantageous to them for the reason that their books would be open to their inspection, and accordingly we talked over the matter between several of us of raising enough money and buying this patent and turning it over to a holding company, which in turn would license all the companies to use it. As a result of that talk Mr. Day, of the Day-Ward Company, and Mr. Barnes, of the Barnes Manufacturing Company, and myself, went to Trenton, New Jersey, to look into the organization of the Potteries Selling Company. That was early in March, 1908, a few days after the meeting that I spoke of, in Chicago.

Q. Now, may I interrupt your story long enough to fix the date exactly and show you certain letters. I show you a letter dated March 2, 1908, from George E. Day to you; a telegram dated March 3rd, from Warren, Ohio, addressed to you and signed by George E. Day; a telegram dated March 4, without the year, addressed to the Seamless Steel Bathtub Company, Detroit, and signed "The Day-Ward Company," and a letter from the Day-Ward Company addressed to the Seamless Steel Bathtub Company, dated March 4th, 1908,

and I ask you to look at those documents and state what they are.

A. The letter of March 2nd, signed by Mr. George E. Day, is to me.

Q. Did you receive that letter? A. Yes, sir.

Mr. NOBLE: I offer that letter in evidence as Defendant's Exhibit No. 14.

Letter referred to was then marked and filed as "Defendant's Exhibit No. 14."

Mr. NOBLE: Defendant's Exhibit No. 14 reads:

"THE DAY-WARD COMPANY,
"Warren, Ohio, U. S. A., March 2nd, 1908.

"Mr. E. L. Wayman,
"c/o Seamless Steel Bathtub Co.,
"Detroit, Mich.

"Dear sir:—

"The writer has decided to leave tomorrow night for 'the East, as he has some matters to look after in New "York for a day, and will meet yourself and Mr. Barnes "in Trenton on Thursday morning at Mr. Mattlack's "office about ten o'clock.

"Yours respectfully,

"D/F "Geo. E. Day."

Q. Who is the Mr. Barnes there referred to?

A. Mr. T. R. Barnes, secretary of the Barnes Manufacturing Company, of Mansfield, Ohio.

Q. Is the George E. Day, by whom that letter is signed, the George E. Day who is secretary and treasurer of the Day-Ward Company? A. Yes, sir.

Q. And who is Mr. Mattlack?

A. He is general manager of the Trenton Potteries Company, I believe the correct name is, at Trenton, N. J.

Q. What is that telegram (indicating)?

A. This is a telegram to me dated March 3rd, from Mr. George E. Day.

Q. Did you receive that telegram? A. Yes, sir.

Mr. NOBLE: I offer that in evidence as "Defendant's Exhibit No. 15."

Telegram referred to was then marked and filed as

"Defendant's Exhibit No. 15." 1

Mr. NOBLE: This telegram reads:

"Warren, O., Mar 3-08

"E. L. Wayman,
"Care Seamless Steel Bathtub Co,
"Detroit, Mich.

"Mattlack wires cannot meet us until Friday morn-
"ing. Expecting letter will wire more definitely to-
"morrow.

"George E. Day."

Q. You received this letter (indicating)? A. Yes, sir. 2
Q. What is this letter?
A. A letter of March 4th, 1908, confirming the telegram.
Q. You received that letter, did you? A. Yes, sir.

Mr. NOBLE: I offer that as Defendant's Exhibit No. 16.

Letter referred to was then marked and filed as "Defendant's Exhibit No. 16."

Mr. NOBLE: This reads as follows:

"THE DAY-WARD COMPANY,
"Warren, Ohio, U. S. A., March 4th, 1908. 3

"Seamless Steel Bathtub Co.,
"Detroit, Mich.

"Gentlemen:

"We confirm our telegram to you of even date as fol-
"lows: 'Advise Mr. Wayman to meet Mr. Day in Tren-
"ton Friday.' Would say Mr. Wayman called us up
"by telephone from Pittsburg a short time ago and ad-
"vised us that he would meet Mr. Day at Trenton on
"Friday.

"Yours truly, 4
"The Day-Ward Co.,
"W/F "Per A. G. Ward."

Q. I now show you a telegram and ask if that is the same matter as the letter I just read? A. Yes.

Mr. NOBLE: I offer that in evidence as Defendant's Exhibit No. 17.

The telegram referred to was then marked and filed as "Defendant's Exhibit No. 17."

1 BY Mr. NOBLE:

Q. Do those exhibits fix the date of the visit which you made to Trenton with Mr. Day and Mr. Barnes? A. Yes, sir.

Q. Now, go on with what you were saying about your visit there and your efforts to acquire this patent for the Seamless Steel Bathtub Company?

A. Mr. Day and Mr. Barnes and myself met Mr. Mattlack and went over the subject-matter of his organization. Some time a little later Mr. Day and Mr. Barnes and myself met in Cleveland, where we went over in a rough way the terms of a license agreement.

2 BY Mr. GROSVENOR:

Q. When was this? A. Shortly after that, in 1908.

Mr. GROSVENOR: Thank you.

THE WITNESS (continuing): I had with me a number of electrical licenses, and the rough form that we outlined was patterned after those licence agreements.

Q. I now show you the carbon copy of a letter dated March 11, 1908, and addressed to Mr. G. E. Day, Warren, Ohio, unsigned, but in the left-hand corner of the second page showing 3 the words "E. L. Wayman/J.W." and ask you what that document is?

A. That is a copy of a letter which I wrote to Mr. Day on March 11th.

Q. Did you mail the original of that to him?

A. Yes, sir, it went out of the office, and that is the carbon copy.

Q. Did you ever talk with him about it afterwards?

A. Yes.

Q. And he said he received the letter?

A. I don't remember him saying he received the letter, 4 but—

Q. Did he talk to you about the subject-matter of the letter? A. Oh, yes; yes.

Mr. NOBLE: I offer that letter in evidence as Defendant's Exhibit No. 18.

Letter referred to was then marked and filed as "Defendant's Exhibit No. 18."

Mr. NOBLE: Before reading this letter on the Record, I wish to state that I am informed that the Day-Ward

Company, with which Mr. Day was formerly connected, is thinking of substituting other counsel of record, in this case. I have not received that information directly from them, but I am so informed. The letter which I am offering, therefore, I will withhold if counsel for the Government desires that they shall be present when this testimony is being taken, but this is a part of my case and I am ready to proceed. 1

Mr. GROSVENOR: Counsel for the Government is counsel for the Government, and not for any of the defendants, Mr. Noble being counsel for the Company to whom he refers on the Record.

Mr. NOBLE: The source of my information comes indirectly from counsel for the Government as to the proposed change of counsel. 2

Mr. GROSVENOR: I understand that the Day-Ward Company are arranging to have a substitution of counsel, but of course until this is done their counsel of Record has full authority in the premises.

Mr. NOBLE: The letter dated March 11th, just referred to, and which is offered in evidence as Defendant's Exhibit No. 18, reads as follows:

"Mar. 11, 1908. 3

"Mr. G. E. Day,
"WARREN, OHIO.

"Dear Sir:—

"I enclose you agency agreement which is in the "form of agreement used between the lamp manufac- "turer and the jobber who acts as agent for their par- "ticular brand of lamps. There are some very good "points in this which I have marked, and which could "be used in a contract between the selling company "and the jobber." The selling company which you mentioned there was the selling company which you said you and several manufacturers thought of forming—putting up money for forming to purchase the Arrott patent? A. Yes. 4

Q. Which selling company you had in mind at that time might grant licenses to manufacturers of sanitary enameled iron ware, is that correct? A. Yes, sir.

Q. (Reading): "You will note that it states very specific-

"ally that the jobber loses his rebate in case he does not live
"up to the contract. The incandescent lamp manufacturers
"had in their agreement the following:

"'This Company is licensed to use chemical exhaust
"'process of obtaining a vacuum in lamps.
"'This process is essential to the production of a lamp
"'of the highest quality licensed in patent
"'numbers.'

"The reproduction of the license label also appears
"on the letter-head. If this arrangement goes through.
"I think it would be well to have all of the manufac-
"turers put on their letter-heads something to the fol-
"lowing effect." When you say, "all the manufactu-
rers" you mean all the manufacturers to whom you
might grant licenses?

A. Yes.

Q. (Reading): "'This Company is licensed to use the
"'automatic dredge process of applying porcelain to enam-
"'eled ware. This process is essential to the production of
"'enamel ware of the highest quality, Licensed under pat-
"'ent

"I am leaving this afternoon for New York and
"will be at the Manhattan Hotel until Saturday after-
"noon.

"Trusting that this information will be of value to
"you, I am,

"Yours very truly,

"E. L. Wayman,
"Assistant Manager."

BY MR. NOBLE:

Q. Now, was Mr. Day one of the men that you were thinking of associating with you in purchasing the Arrott patent at that time? A. Yes, sir.

Q. Now, did anything come of your efforts at that time to purchase the Arrott patent? A. No.

Q. Will you state why not?

A. Mr. Day took the matter up with the Standard Company, but was not able to accomplish anything. They stated that they did not believe that they cared to dispose of the patent or enter into such close relations with their competitors.

Q. So that the result of your efforts was that you failed to purchase the patent at that time? A. Yes, sir. 1

Q. You said that you applied for a license for the Seamless Steel Bathtub Company under the Arrott patent; that the Standard declined to give you one. Did you thereafter get a license from them? A. No, sir.

Q. Did they agree to give you one? A. Yes, sir.

Q. Why didn't you take it?

A. We wrote them to send us the papers, but they never came.

Q. Why didn't you follow it up?

A. Inasmuch as our company at that time had practically discontinued doing business, I never followed it up. 2

Q. Did the Seamless Steel Bathtub Company ever commence doing business again? A. No, sir.

Q. Did you make any efforts to reorganize it?

A. Yes, sir.

Q. Between what periods?

A. From the early part of 1908 until about the 1st of August, 1909.

Q. Were your efforts successful? A. No, they were not.

Q. Now, you spoke of your connection with the electrical industry and of certain license agreements in that industry. What electrical industry were you connected with? 3

A. I was connected with the Western Electric Company of Chicago.

Q. Will you please state in what capacities?

A. I went to work for the Western Electric Company in 1895, first in the position of bill clerk; then in the stock rooms; then in the sales department in Chicago. From there I went in the capacity of salesman to Detroit. That was in the latter part of 1901. I opened up an office in Detroit for the Company and continued to sell and introduce their apparatus and supplies throughout that territory. 4

Q. Were you associated there in any way with Mr. Eugene H. Sloman?

A. Yes, sir; Mr. Sloman and I had an office together.

Q. That was in 1901?

A. That was early—it was shortly after I came to Detroit, yes.

Q. And for how long a period did you and he share offices? A. For something over a year.

Q. Did your intimacy with him continue?

A. Yes, while I was associated with Mr. Sloman that was where I first became interested in the seamless steel bath tubs. Mr. Sloman, at the time I met him, was trying to succeed in drawing a bath tub out of a single sheet of steel. He was making experiments, but he was hindered by his finances. We became very well acquainted, and I later sold him a motor on long time, with which he was experimenting and using in this effort to draw a bath tub from a single piece of steel. Later my company sent me to San Francisco as sales manager—

Q. (Interrupting): When was that, do you recall?

A. Early in 1903.

Q. How long did you stay in San Francisco?

A. I was in San Francisco from the early part of 1903 until some time in October, 1906.

Q. Now, tell us the various positions you occupied there and generally about the business you did?

A. I went there as sales manager of the supply department. We had quite a small business at that time—in fact I think it amounted to about twenty or twenty-five thousand dollars a month. The opportunities out there at that time were very good. It was an excellent field for electrical apparatus and material. The high tension lines were just opening up, and there was quite an extensive work being done all along the Coast. The business that we were principally engaged in was electrical supplies and apparatus. These electrical supplies were mostly sold under contracts in the shape of license agreements, covering sockets, cut-outs, arc lamps, fan motors and switches.

Q. And those were license agreements under patents?

A. Yes.

Q. What positions did you hold there?

A. From sales manager I was promoted to assistant manager, and then later I was made manager of the company.

Q. And for how long were you manager of the company at San Francisco?

A. I think it was from May until I left there in October. I was promoted to the position of manager about six months before I left the employ of the company.

Q. Were you there at the time of the earthquake?

A. Yes.

Q. In what position?

A. I was assistant manager of the company at the time.

Q. When did the earthquake occur? 1

A. It was April 18th, 1906.

Q. What effect, if any, did that have upon the company's business there? Just describe fully what you did in connection with the earthquake in respect to the business in which you were then engaged?

Mr. GROSVENOR: Counsel for the Government respectfully suggests that this history of earthquakes and the electrical business is not relevant to the combination under discussion, and therefore objects, on the ground that it is immaterial and irrelevant, to this whole line of questioning. 2

Mr. NOBLE: Go on, Mr. Wayman.

A. The morning of the earthquake some of the other employees and myself were fortunate enough to get down there in time to thoroughly police the building and get out the fire hose, and through pretty hard efforts and good luck we managed to save the company's place. I presume the merchandise and what we had on hand amounted to about one million dollars. The fact that we saved the building and that all the other electrical houses were practically destroyed naturally brought us a great amount of business. Our business doubled right away. I remember that from doing a supply business of about $50,000 a month at that time, our supply business and electrical business during the month that I left there amounted to over one hundred thousand dollars a month. The telephone business ran up too on a basis of between five and six million dollars a year. Our total business was over $7,000,000 that year. 3

Q. When you first went there, what was the total volume of business? A. Between $250,000 and $300,000 a year.

Q. And under your management it was built up to how much? 4

A. In the supply business to over a million dollars a year, and the telephone end, of which I was assistant manager, the total business ran up to about $7,000,000.

Q. Were there any other buildings saved in the same locality as your building?

A. No, there were not. I think outside of our building the only buildings in the downtown district that were saved were the Post Office and the Mint.

Q. The rest of them were destroyed by the fire?

A. Yes, sir.

Q. Now, when you were in Detroit in 1901 you said that Mr. Sloman showed you some work that he was doing in respect to manufacturing bath tubs out of a single sheet of steel? A. Yes.

Q. Did you participate in any of the experiments that he was carrying on?

A. Well, in a small way. I was very much interested in the proposition because of the advantages over iron that were apparent and that were very prominent. The fact that a five-foot tub drawn out of a sheet of steel would weigh approxi-
2 mately one hundred pounds less than that of iron was quite a point in the saving of freight.

Q. Were the manufacturers of cast iron enameled tubs having any difficulties at that time that you know of?

A. Yes, there were considerable difficulties. I was given to understand that the iron companies lost a great deal of their product through the fact of improper manufacturing methods and also defects due to impurities in the iron, etc. The fact that steel was more or less of a pure metal, Mr. Sloman argued, it would enamel much more easily than cast iron.

3 Q. When you first went to San Francisco, how many employees were there in the business?

A. Oh, I presume we had about fifty.

Q. And when you left there three years and something later? A. There were between four and five hundred.

Q. Were these license agreements under patents to which you referred used by the Western Electric Company?

A. Yes, sir.

Q. Were their terms as broad and comprehensive as the terms which you later embodied in the license agreement similar to Exhibits 9 and 11 offered by the Government?

4 Mr. GROSVENOR: Counsel for the Government objects to this entire line of questioning as immaterial and incompetent. What the agreements of the electrical companies may or may not have been is absolutely immaterial in this case. Furthermore, these agreements are now in question in the Court, and it seems utterly immaterial to refer from one question to another question of law.

Mr. NOBLE: What was I saying when counsel interrupted me with his stump speech? 1

The stenographer then read the last question.

A. Yes, sir.

Q. Were you familiar with those terms and the operation under them? A. Yes, sir.

Q. Had you been selling goods in accordance with them for many years? A. Yes.

Q. And during your work as assistant manager and manager of the San Francisco house, had you had salesmen under you using them? A. Yes, sir.

Q. And was it a part of your duty to refer to them frequently? A. Yes, sir. 2

Q. Had you ever heard anybody question their legality at any time or any place? A. No, sir.

Q. Either under the Federal or State laws? A. No, sir.

Q. Now, where did you go when you severed your connection with the Western Electric Company in San Francisco in October, 1906?

A. I went with the Seamless Steel Bathtub Company in Detroit, Michigan, in the capacity of sales manager.

Q. Who asked you to come there? A. Mr. Sloman.

Q. Now, will you please describe what business that company was engaged in? 3

A. The Seamless Steel Bathtub Company, manufactured a bath tub that was drawn out of a single sheet of steel and then enameled. This tub, compared to the cast iron tub, weighed about 115 lbs. less, but was similar in appearance and design. When I first went there they were not quite ready for operation, and I tried to close up some negotiations in Canada that Mr. Sloman had started for the building of a Canadian plant to operate under a license from us at so much per tub.

Q. The license which you refer to, in Canada, was a license agreement? A. Yes. 4

Q. Under patent?

A. Yes, under patents that were owned by the Seamless Steel Bathtub Company. There was a patent on the tub itself and some process and application patents.

Q. Those patents covered the shell itself, as well as the methods of making it? A. Yes.

1 Q. Now, did the company thereafter start into the manufacture of these tubs?

THE WITNESS: You refer to the company in Detroit?

Mr. NOBLE: Yes, the Seamless Steel Bathtub Company.

A. Yes, shortly after that we put them on the market, early in 1907. I visited several jobbers, and knowing the conditions of the business after inquiring into it, I attempted to license jobbers under a license agreement for the sale of
2 seamless steel bath tubs.

Q. Under the patents which the company owned?

A. Yes, sir.

Q. Did you issue any licenses to jobbers?

A. I issued licenses to several.

Q. I show you a paper upon the letter-head of the Seamless Steel Bathtub Company, Detroit, Michigan, addressed to the Republic Manufacturing Company, Chicago, Ill., and signed by you as manager, with the words "accepted, Repub-"lic Mfg. Co., W. A. Ratcliffe, Prest."

A. That is a license agreement concerning the sale of
3 seamless steel bath tubs by the Republic Manufacturing Company to plumbers.

Mr. NOBLE: I offer that as Defendant's Exhibit No. 19.

Letter referred to was then marked and filed as "Defendant's Exhibit No. 19."

Mr. NOBLE: This letter reads as follows:

"SEAMLESS STEEL BATHTUB COMPANY,
Union Trust Building,
Detroit, Mich.

March 6, 1907.

4

Republic Mfg. Co.,
Chicago, Ill.
Gentlemen:—

CLAUSE (1). It is agreed that you will purchase from us 2000 assorted bath tubs; this entire quantity to be taken by you by March 31st, 1908.

CLAUSE (2). As this company is the owner of cer-

tain letters patent under which this product is manufactured, and is, therefore, interested in maintaining the value of these patents, it is agreed that you will maintain the selling prices issued by this company, as set forth in the sheet dated March 1st, copy of which is attached herewith, and is to be considered as part of this agreement, or such resale prices as may be established by the jobbers in the city of Chicago. 1

It is understood that the prices mentioned in this agreement and in the price sheet attached, cover only the value of the product as furnished by us, and that no extra parts are to be furnished by you to your customers without making an extra charge for such additional equipment. In event of it being necessary to advance resale prices, you agree to adopt such advanced schedule of selling prices immediately upon notice from us that advanced resale prices become effective. Within five days of our request in writing, you agree to advise us definitely whether you have or have not sold or offered to sell any product purchased in this agreement at lower prices or more favorable conditions of sale than those established in the city of Chicago. 2

3

CLAUSE (3). In consideration of this agreement being faithfully performed by you, we agree to invoice the product ordered in Clause one at a discount of 5%, to be deducted from the lowest quantity price as shown in net price list to Jobbers attached, or any Jobbers prices we may issue, except that when ordered in less than carload lots, the extra charge for less than carload lots is to be paid by you, less 5%.

CLAUSE (4). It is agreed that we will not quote any other Jobber in the City of Chicago any better prices than our regular Jobber's prices. It is agreed that we will furnish you free of charge, such printed matter as we may issue from time to time, that may be necessary for the proper publicity of our product, and that all inquiries received from the City of Chicago, other than those from Jobbers will be referred to you for attention. 4

CLAUSE (5). Any violation by you of the terms

of this agreement enables us to terminate this contract immediately upon notice in writing to that effect.

CLAUSE (6). The spirit of this contract is in the nature of a continual agreement, but may be cancelled by either party at the end of three months written notice.

Yours truly,
SEAMLESS STEEL BATHTUB COMPANY,
E. WAYMAN,
Asst. Mgr.

Accepted:—
Republic Mfg. Co.
W. A. Ratcliffe, Prest.

Q. Now, did that company, the Seamless Steel Bathtub Company, proceed to manufacture seamless steel bathtubs?

A. Yes, sir.

Q. And did they put them upon the market and go into the business generally?

A. Yes, sir; we shipped them all over the United States and some foreign shipments were made.

Q. You said that company went out of business, why?

A. Well, because of an insufficiency of capital, together with the panic in 1907, which made it impossible for us to continue.

Q. And did not the financial backer of the concern die?

A. Yes, sir.

Q. Who was he? A. Mr. Theodore Buhl.

Q. I show you now a paper consisting of three typewritten sheets and ask you what that document is?

A. This is a license agreement covering the sale of steel shells to the other manufacturers under patents—

Q. Other manufacturers of what?

A. Of sanitary enameled ware, under patents owned by the Seamless Steel Bathtub Company.

Q. Who prepared that instrument? A. I did.

Mr. NOBLE: I offer this in evidence, calling attention to the fact that there are various interlineations in ink and pencil which I will later ask questions about.

Paper referred to was then marked and filed as "Defendant's Exhibit No. 20."

Mr. NOBLE: Mr. stenographer, please make an exact copy of this instrument.

Defendant's Exhibit No. 20 reads as follows: 1

THIS AGREEMENT, made in duplicate this day by and between the Seamless Steel Bathtub Co., a corporation organized and existing under the laws of the State of Michigan (hereinafter called the "Licensor"), party of the first part, and

a corporation organized and existing under the laws of the State of (hereinafter called the "Licensee"), party of the second part,

WITNESSETH: 2

THAT WHEREAS, the Licensor has this day granted to the Licensee a non-exclusive license to make and sell Seamless Steel Bathtubs under the following United States Letters Patent, to wit: upon terms and conditions in said license and license agreement set forth; and

WHEREAS, the Licensor owns or has the right to grant licenses under the following additional United States Letters Patent, to wit:

AND WHEREAS, the Licensee is desirous of securing a license of the character and upon the terms and conditions hereinafter set forth under such last enumerated Letters Patent, for the manufacture and sale of the Licensor's 3

NOW, THEREFORE, for and in consideration of the covenants of this agreement, the parties hereto agree as follows:

The Licensor hereby grants to the Licensee, subject to the provisions hereinafter contained a non-exclusive license to practice in the manufacture of Seamless Steel Bathtubs, the processes patented in said several Patents, to make and use in such manufacture the machines and devices patented in said Patents and to use and sell goods so made; the said license being non-assignable and non-transferable, except to successors to substantially the entire good-will and business of the Licensee. This License shall be available for the Licensee, its successors or assigns only so long as it or they are not engaged in the manufacture of similar lines. 4

1 The Licensee shall pay the following royalties for license herein granted, to wit: xxx/2% of the net selling prices as established by the Licensor, the net amount of royalties with all rebates deducted, as hereinafter provided for, not to be less than twenty-five thousand (25,000) dollars for the first year, and not less than forty thousand (40,000) dollars per annum for each succeeding year during the life of this contract.

2 The Licensee shall on or before the 20th day of July, October, January and April, of each year succeeding the term of this contract render to the Licensor a sworn statement in writing showing the number and description of goods made hereunder, sold and invoiced by the Licensee during the quarter then last past, and shall pay the royalties as above provided for each quarter on or before the 30th day of each of said months in each year. The books of account of the Licensee shall be open to inspection at all reasonable times, of an accountant appointed by the Licensor, for the purpose of verifying the statements rendered under this agreement.

3 All terms, conditions, regulations and prices covered by this agreement now established by the Licensor and set forth in Schedules attached to and made part hereof shall be in force and effect until other terms, conditions, regulations or prices are substituted therefor by the Licensor, which substitution it is entitled to make from time to time hereafter by notice in writing to the Licensee. The Licensee covenants to adhere to and maintain such terms, conditions, regulations and prices as may be established by the Licensor from time to time.

4 If at the end of the third quarter of the first year (said year beginning) it shall appear that the Licensee has during the first quarter complied with all the terms of this agreement, the Licensor shall credit the Licensee upon its next succeeding payment hereunder with the following rebates from the royalties paid for said license for said first quarter's sales, to wit, 2-½% of the net selling prices (as established by the Licensor), at which the goods were sold.

At the termination of each succeeding quarter of the

said license, if it shall appear that that Licensee has fully complied with all the terms of this agreement during the second succeeding quarter, the Licensor shall make a similar rebate in respect of the royalties paid by the Licensor for sales made during the second preceding quarter. 1

In case of failure on the part of the Licensee to comply fully with the terms of this agreement during any quarter the Licensor may withhold any and all unpaid rebates, and declare the same forfeited as penalty for said violation and shall at once notify the Licensee to that effect. 2

Nothing in this agreement shall be construed to prevent the Licensee or its customers from exercising all the rights and privileges in any such territory as are at present enjoyed by or shall be extended to customers of any other Licensee under a similar license.

The Licensee admits the validity of said several Patents enumerated herein, for the purpose of this agreement and license only, and it is further agreed that upon the termination of this agreement and license for any cause the Licensee shall not be estopped to deny the validity of the said Patents, or any of them. 3

The Licensor agrees that it will, upon the written request of at least three-quarters in number of the Licensees at any time holding licenses similar to this license, use all legal and equitable means to protect the Licensee in the full use and enjoyment of the rights under this agreement and license from all non-licensed parties using any of said machines, processes, or devices, or from any sales infringing said patents by customers or any parties, either by suits or by bringing them under a similar license. If, however, the Licensor refuses to take such action against such non-licensed parties, other customers, or users of such non-licensed goods, for ninety days after being requested so to do, as before provided, this license shall be voidable at the election of the Licensee communicated in writing to the Licensor, and the Licensee thereafter shall be released from all obligations hereunder, and shall not hereafter be estopped to deny the validity of said Patents or any of them. 4

No goods manufactured under this License shall

1 be sold, unless they bear a registered label owned by the Licensee and in addition thereto a license tag or label approved by the Licensor, which license tag or label shall be placed in a visible position on all goods made hereunder and sold by the Licensee.

The Licensor shall give the Licensee the benefit of all further patents it may secure pertaining to, or such improvements as it may make in the manufacture of Seamless Steel Bathtubs, without additional cost to the Licensee. The Licensee shall give the Licensor the same privileges without cost, should they come 2 into possession, or have knowledge of, all further patents and improvements in the manufacture of Seamless Steel Bathtubs.

This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of five (5) years from the date hereof, unless previously terminated as herein provided, and if the Licensee faithfully performs the conditions hereof throughout the contract period, this agreement and license shall be renewed at the expiration of said period, at the option of the 3 Licensee, for a further term of five years on conditions not less favorable than herein expressed.

This agreement, however, may be cancelled by the Licensor by written notice upon repeated breaches by the Licensee of any of the covenants herein contained; and shall terminate in any event upon the termination (for any cause whatsoever) of the License Agreement mentioned in the first recital of the preamble hereof.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year above written.

4 .....

.....

BY MR. NOBLE:

Q. Did you attempt to get manufacturers of sanitary enameled iron ware to accept licenses similar to the one here expressed on this paper?

A. Yes, sir, I saw several of the manufacturers.

Q. You had conferences with a number of them?

A. Yes, sir.

Q. Did you succeed in interesting them in the matter? 1

A. I succeeded in interesting two of them. I saw the United States Sanitary Manufacturing Company, the J. L. Mott Iron Works, the L. Wolff Manufacturing Company, the Humphryes Manufacturing Company, and A. Weiskittel & Son Company. The Humphryes Manufacturing Company offered to make a contract with me—that is, with the Company—for ten years for the purchase and sale of the completed article made under our patents. The Mott Company was interested in it only from an export standpoint, but inasmuch as I was not able to interest all the manufacturers so that I could count on a substantial output, I dropped the 2 matter. Nothing ever came of it.

Q. Now, upon exhibit 20, which was the license agreement you just referred to, I notice that there are numerous ink interlineations. Some words are scratched out and some words are written in pencil and some paragraphs scratched out. Will you please tell me how those marks and interlineations came there?

A. Well, I used that paper as a basis for making up the present license agreement, that is the preliminary rough forms.

Q. You refer to the license agreement which you granted 3 to the various manufacturers under the Arrott patent?

A. Yes, sir, not the final forms, but the preliminary forms.

Q. And this was used by you as a working copy?

A. Yes, sir.

Q. Do you remember when this agreement, Defendants' Exhibit No. 20, was prepared by you in the first instance?

A. The latter part of 1907 or the early part of 1908.

Q. That is, when you were with the Seamless Steel Bathtub Company? A. Yes, sir.

Q. And it was prepared in your effort to get manufacturers of sanitary enameled iron ware to purchase your steel 4 shells under this license agreement? A. That is correct.

Q. At the time that you were in negotiation with Mr. Day and others, attempting to acquire an interest in or purchase the Arrott patent, did you prepare at that time any papers such as you had in mind to issue as licenses to manufacturers if you were able to acquire the Arrott patent?

A. Not that I recall.

Q. Now, I show you a paper entitled "Cooperative Selling And Purchasing Contract with Seamless Steel Bathtub

Company, Detroit, Michigan, manufacturers of 'Sanisteel' Porcelained Baths," and ask you what that is?

A. This is the form of license agreement that I was working on to put into effect between the Seamless Steel Bathtub Company and its distributors. It calls attention to the fact that the tubs are manufactured under certain patents, and provides that the goods so purchased must be sold in accordance with the terms to plumbers established by the Seamless Steel Bathtub Company.

Mr. NOBLE: I offer this instrument in evidence as "Defendants' Exhibit No. 21."

Paper referred to was then marked and filed as "Defendants' Exhibit No. 21."

Defendants' Exhibit No. 21 reads as follows:

CO-OPERATIVE SELLING and
PURCHASING CONTRACT with
SEAMLESS STEEL BATHTUB COMPANY
DETROIT MICHIGAN
manufacturers of
"SANISTEEL" PORCELAINED BATHS.

THIS AGREEMENT, made this day of 190 , between the Seamless Steel Bathtub Company, a Corporation organized and existing under the laws of the State of Michigan, party of the First (hereinafter called the "Company"), and of State of party of the Second. part, (hereinafter called the "purchaser"):

WITNESSETH:

THAT WHEREAS, the Company controls or is licensed under the following United States Letters Patent, relating to Sanisteel Steel Bathtubs and processes and apparatus used in the manufacture thereof, to wit:

Number	Date	Inventor	Description

THAT WHEREAS, the Company is therefore interested in maintaining the value of these letters patent, it is willing to offer the Purchaser the benefit of the Co-operative Selling and Purchasing Plan outlined herein;

AND WHEREAS, the Purchaser desires to purchase from the Company as Licensee under said Letters Patent, Sanisteel Steel Baths for the purpose of selling to others, and the Com-

pany is willing to sell Sanisteel Steel Baths to the Purchaser for that purpose; 1

NOW, THEREFORE, in consideration of the premises and the covenants herein contained, it is agreed as follows:

1. The Company agrees to sell, and the Purchaser agrees to take and pay for, Sanisteel Porcelained Baths at the following prices:

Class A Grade A Guaranteed Baths (Porcelained inside only)

5′ 3″ Roll Rim "Lazarre" Baths	List Price	$27.00
5–½′ 3″ " " "Iole" "	" "	30.75 2

Discounts: Less Carloads 30 and 5%. Carloads 30 and 10%.

Class A Competition Baths (Porcelained inside only)

5′ 3″ Roll Rim Bath	List Price	$27.00
5–½′ " " "	" "	30.75

Discounts: Less Carload 30 and 10% Carload 30 and 10 and 5%

Single Crates for holding one Bath	50 cents net
Combination Crates for holding two Baths	75 cents net 3

Prices fob cars Detroit, subject to freight allowances and equalizations as given in printed Price List of Company dated

Class AA Grade A Baths (Porcelained both sides)

5′ 3″ Roll Rim "Queen" Baths	List	$90.00
5–½′ 3″ " " "Princess" "	"	105.00

Discounts: Lots of 1 to 12 inclusive	Discount	60–10%
Lots of 13 to 24 inclusive	"	60–10–5%
Lots of 25 to 49 inclusive	"	66–2/3% 4
Lots of 50 to carload (80)	"	66–2/3–5%

Boxing $2.00 extra net.
Prices fob Cars Detroit with no freight allowance.
Extra charges for all baths drilled "special"

Bell supply	$1.00	net
Overflow only	1.00	"
Cock Holes etc	1.00	"
Hole in Rim	.25	"

2. The Purchaser shall observe and strictly maintain the "resale" selling prices as follows:

Class A Grade A Guaranteed Baths

Discounts: Lots 1 to 12 inclusive		Discount	20%
13 to 24	"	"	20–5%
25 to 49	"	"	20–10%
50 to carload (120)			30–5%

Single Crates for holding one Bath 50 cents net
Combination Crates for holding two Baths 75 cents net

Prices fob cars Detroit, subject to Freight allowances and equalizations as given in printed Price List of Company dated .

Grade A Class AA Baths

Discounts: Lots of 1 to 6 inclusive		Discounts	50-10%
7 to 12	"		60%
13 to 20	"		60-5%
21-30			60-10%
31 to carload (80 baths)			66-2/3%

Boxing $2.00 extra net
Prices fob cars Detroit with no freight allowance.

Extra charge for all Baths drilled "special"

Bell Supply	$1.00 net.
Overflow only	1.00 "
Cock-Holes other than 3⅜" between centers	1.00 "
	.25 "

3. It is understood that the "resale" prices maintained in this agreement and the price list attached cover only the value of the product as furnished by the Company, and that no extra parts are to be furnished the Purchaser's customers without making an extra charge for same at market prices. In the event of it being necessary to advance resale prices the Purchaser agrees to adopt such advanced schedule of selling prices immediately upon notice from the Company that advanced resale prices become effective. Within 5 days of the Company's request in writing, the Purchaser agrees to advise the Company definitely whether it has or has not sold or offered to sell any product purchased in this agreement, at lower prices or on more favorable conditions of sale than those established by the Company.

4. The Company guarantees its "First grade guaranteed ware," bearing its Blue and Gold Guarantee Label, for a period of 5 years from date of sale, against "inherent defects" of any nature. This means that with ordinary uses and in ordinary changes of atmosphere, subjecting the tub to alternate hot and cold water, that the enamel will not crack or craze. Should inherent defects develop during the life of our guarantee, we will replace the goods "free of charge," which means that *in addition to replacing the goods, we will reimburse the Purchaser for Freight Charges, Cartage, cost of labor in taking out and installing "the replacing" fixtures as well as decorating charges, if they have been incurred.* 1 2

5. The Company guarantees its "Competition" (Second grade Baths showing minor defects in workmanship and *not* bearing our Guarantee Label) for a period of one year from date of sale against "inherent defects" of any nature. This means that with ordinary usage and in ordinary changes of temperature, subjecting the tub to alternate hot and cold water, that the Porcelain Enamel will not crack or craze. Should inherent defects develop during the life of our guarantee, we will replace the goods "free of charge," which means *that in addition* to replacing the goods, *we will re-imburse the purchaser for Freight and Cartage Charges*, but *will not be responsible* for any other charges in connection with "replacing." 3

6. The Company agrees to inaugurate a general publicity campaign to the consuming public, architects, plumbers, etc., and to furnish the Purchaser, free of charge, such printed matter as the Company may issue from time to time, that may be necessary to the proper publicity of its product.

7. In consideration of the Purchaser carrying a proper stock to meet the demand created by the Company, the Company agrees to allow the Purchaser to return at the purchase price any goods not disposed of within 6 months from date of shipment by the Company, provided they do not contain defects other than inherent defects arising from defective workmanship or material. 4

Q. When did you draw this agreement, Defendant's Exhibit No. 21? A. The latter part, I think, of 1908.

Q. So that prior to your leaving Detroit and going to Pittsburgh in the summer of 1909, you had worked for how

many years with the Western Electric Company and its branch companies? A. Eleven years.

Q. You had been in various positions which called upon you to work under the patent license agreements which they had during a large part of that time? A. Yes, sir.

Q. Both as a salesman and as a manager? A. Yes, sir.

Q. And in your connection with the Seamless Steel Bathtub Company you had drawn and attempted to put into operation several similar license agreements under patents, is that right? A. Yes, sir.

Q. How many furnaces did you have for the manufacture of bath tubs in the Seamless Steel Bathtub Company's plant?

A. We had four.

Q. What, if anything, happened in July or August, 1909, relative to the Sanitary Enameled Ware Association?

A. There was not any, then, as far as I know. It was in the shape of reorganization.

Q. What, if anything, happened as to yourself?

A. Oh, I received a letter from Mr. Cline, of the United States Sanitary Manufacturing Company at Pittsburgh, stating that they were forming a new association or reorganizing the old one, and that they were looking for a Commissioner. He said that if I was open for the position that he would be very glad to see what he could do towards my obtaining it.

Q. Now, what was the condition at that time of the business of the Seamless Steel Bathtub Company?

A. Well, I had spent in connection with Mr. Sloman about a year and a half trying to reorganize it, but it had gotten to such shape that I had about concluded that it was almost useless to do anything with the property. When I received this letter from Mr. Cline I was not quite sure whether I wanted to go to Pittsburgh or not, because I did hate to give up the reorganization of the Company, which I thought I might possibly get through.

Q. You were largely interested in that Company financially, were you not, and in the financial reorganization?

A. Yes; when I received the letter from Mr. Cline I showed it to Mr. Colquitt.

Q. Who was Mr. Colquitt?

A. Mr. Sloman's assistant. He was of the opinion that it would give me a good opportunity to get acquainted with the various manufacturers and try and put through the pat-

ent license agreement that I had attempted early in 1908. I talked the matter over with Mrs. Wayman, and she was of the same opinion, and it also struck me at the same time that I might be able to buy the patents myself and thereby become the licensor of the different companies. I accordingly wrote Mr. Cline a letter and made application for the position of commissioner of the Association that they were about to form or reorganize. 1

Q. Were you elected? A. Yes, sir.

Q. When were you elected to the position?

A. I think it was August 4, 1909.

Q. Were you present at the meeting at which you were elected? A. No, sir. 2

Q. How soon after your election did you go to Pittsburgh to take up your new duties? A. Within the next few days.

Q. That would have made it some time early in August, wouldn't it? A. Yes.

Q. As a result of your work when you were with the Seamless Steel Bathtub Company, did you sell many tubs, that is your personal work?

A. Well, I sold all the tubs, practically. I have forgotten just how many it was. It was something over twenty thousand, I believe. 3

Q. Now, you say that the talk you had with Mr. Colquitt and with your wife was had after Mr. Cline wrote you a letter? A. Yes, sir.

Q. Did you discuss with your wife and Mr. Colquitt the possibility or the thought, or did you have the thought and discuss it with them, that you might purchase the Arrott patent? A. Yes, sir.

Q. And did you discuss with them what your thought was that you might do with it if you did acquire it?

A. Yes, sir.

Q. What did you tell them? 4

A. I thought it would give me an opportunity to make a lot of money if I could get that patent and license all the manufacturers in the business.

Q. On a royalty basis? A. On a royalty basis.

Q. Now, did you discuss this thought or plan of yours of purchasing the Arrott patent and licensing other manufacturers with any manufacturer of sanitary enameled iron ware at that time? A. No, sir.

1 Q. You discussed it with your wife and with your business associate, Mr. Colquitt, is that right? A. Yes, sir.

Q. Shortly after that, did you make plans to finance yourself if you were able to buy this Arrott patent?

A. I laid the foundation for it.

Q. With whom and how? A. Mr. Eugene H. Sloman.

Q. Mr. Eugene H. Sloman was the gentleman with whom you had been associated in the Seamless Steel Bathtub Company? A. Yes, sir.

Q. And with whom you had been associated in your offices as far back as 1901? A. Yes, sir.

2 Q. And to whom you had given your assistance when he was in this experimental stage of these seamless steel bath tubs? A. Yes, sir.

Q. Did Mr. Sloman promise to assist you financially if you could succeed in your enterprise? A. Yes, sir.

Q. And later, when you did succeed in getting your option on the Arrott patent, did he assist you? A. Yes, sir.

Q. Now, in response to your election as Commissioner, which position you said you applied for in reply to a letter of Mr. Cline, did you undertake the duties of Commissioner of the Sanitary Enameled Ware Association? A. Yes, sir.

3 Q. And carry them out? A. Yes, sir.

Q. Had that association under various names been in existence prior to July or August, or whatever this date was, 1909? A. Yes.

Q. Had you, as a manufacturer of bath tubs, at one time been a member of it? A. Yes, sir.

Q. On behalf of the Seamless Steel Bathtub Company?

A. Yes, sir.

Q. You being the representative in that association of the Seamless Steel Bathtub Company? A. Yes, sir.

Q. I now show you a paper signed by numerous persons and ask you what that instrument is, the instrument consisting of three sheets?

4 A. These are articles of association, together with the objects of the Association, and signed by various manufacturers.

Q. What association do you refer to?

A. The Sanitary Enameled Ware Association.

Q. And is that the Association of which you have just

Q. And is that the Association which you have just spoken? A. Yes, sir.

Q. And of which you were at one time Commissioner? 1
A. Yes, sir.

Mr. NOBLE: I offer this instrument in evidence as Defendants' Exhibit No. 22, and ask that it be copied in the Record.

Paper referred to was then marked and filed as "Defendant's Exhibit No. 22."

Defendant's Exhibit No. 22 reads as follows:

"We, the undersigned, manufacturers of enameled "sanitary iron ware, hereby agree to form an Associa- "tion to be known as 'The Sanitary Enameled Ware 2
"Association.' Said Association is formed and is to "be governed along the lines of a report on resolutions "and by-laws presented by a Committee selected and "empowered for such purposes. The said report and "its conditions are hereto attached and are a part of "this agreement and are not subject to change, ex- "cepting such variation as the wisdom of the Body may "from time to time, by a majority vote, decide.

"Witness the signatures of the parties hereto in the "presence of each other or in the presence of witnesses, "the latter provision being made for such members 3
"as are not here present today.

Dated Pittsburgh, Pa., August 4th, 1909."

"Blairsville Enameled Ware Co.,
F. D. Cook, Prest.

Union Sanitary Mfg. Co.,
C. E. Gates.

The Humphyres Mfg. Co.,
By D. A. Carpenter.

Wheeling Enameled Iron Co., 4
By J. E. Wright, Prest.

The Cahill Iron Works,
By F. H. Caldwell, Prest.

J. M. Kohler Sons Co.,
Walter J. Kohler, Pres.

The J. L. Mott Iron Works,
John Reid, Treasurer.

Colwell Lead Co.,
J. T. Duryea.

Standard Sanitary Mfg. Co.,
By Francis J. Torrance, V. P.

L. Wolff Mfg. Co.,
H. M. Hoelscher, Asst. Secy.

United States Sanitary Mfg. Co.,
A. H. Cline, Jr., Secy.

Clymer Mfg. Co.,
W. A. Guthrie, Pres.

National Sanitary Mfg. Co.,
F. G. Borden, Pres.

The McCrum-Howell Co.,
Howard T. Gates, Secretary.

The Day-Ward Co.,
By A. G. Ward.

A. Weiskittel & Son Co.,
By Anton Weiskittel.

The Barnes Mfg. Co.,
T. R. Barnes, Secy. & Gen. Mgr.

McVay & Walker,
Alex. C. Walker.

Iron City Sanitary Mfg. Co.,
J. A. Kelly, Secy. & Treas."

"THE OBJECT OF THE ASSOCIATION.

"RESOLVED:—That the manufacturers of enameled ware here assembled form 'An Association Of Manufacturers of Enameled Ware' with the object of general benefit and improvement of the business in which the several Concerns are engaged.

"#1.—The regulation of sizes of various styles and "patterns of wares.

"2.—Uniformity in catalogue or list prices for simi-"lar goods.

"3.—Uniformity in delivery points, keeping in mind

"the rights of the jobbers as to competition among 1
"themselves.

"4.—Protection as to freight classification and "freight rates on the products of the members of the "Association.

"5.—A general uniformity in the conduct of the "business with at all times due regard for the interests "of the parties hereto and proper and just respect for "the Law.

"6.—The Association is not formed to control or "regulate prices of goods manufactured by its mem- 2
"bers.

"The name of the Association shall be 'The Sani- "tary Enameled Ware Association."

"The officers shall be President, Treasurer, and Sec- "retary, with an Executive Committee of five, all of "whom shall be actively engaged in the manufacture of "enameled ware.

"A Commissioner or Actuary shall be employed at "a stated salary. His duties will be specified by the "executive committee, and their action shall be passed 3
"upon by the Association at its regular or special meet- "ings.

"All officers and the Executive Committee shall be "elected by ballot.

"The meetings of the Association shall be held on "the first Wednesday of August, October, December, "February, April, and June.

"The Executive committee shall meet monthly, at "such time and place as it may elect. The members of "the Executive Committee shall be allowed their re- "spective railroad fare and sleeping car fare incident 4
"to their attendance at the meetings of their Commit- "tee.

"Of the five members selected at this meeting, the "three receiving the highest numbers of votes shall "serve for two years from date hereof and the two re- "ceiving the lowest number of votes shall hold office "for one year and at the next annual meeting two "members shall be elected to this Committee, and at "the second annual meeting, the three members shall

"be elected. This paragraph is not to be construed to "prevent the election of any member at the expiration "of his term.

"In the interim of association meetings, the Execu- "tive Committee shall have full power to transact the "business of the Association, but shall take no action "that would be inconsistent with the rights and inter- "ests of the Association or that would render void "previous acts of the Association.

"The expenses of the conduct of the Association "shall be provided for by an assessment made upon "and collected from the members. The rate or pro- "portion shall be fixed by the Executive Committee "and as nearly as possible be in proportion to the vol- "ume of enameled iron business of the several mem- "bers.

"One vote shall be accredited to each concern mem- "ber of the association but any officer or corporation "may be represented by as many of their concerns at "any regular or special meeting as they desire."

Q. What were your duties as Commissioner of the Sanitary Enameled Ware Association?

A. My duties were to visit the various manufacturers and put into effect the objects for which the Association was formed.

Q. And are those objects the ones embodied in Defendants' Exhibit No. 22? A. Yes.

Q. During the time that you were Commissioner of the Sanitary Enameled Ware Association, or at any time, was there ever any resolution passed or proposed by that association, or any of its members, or of the executive committee, suggesting in any way, shape, form or manner the purchase by you or the assignment to you or the acquisition by you of either the Arrott, the Ditheridge or the Lindsay patents, or any of them? A. No, sir.

Q. Was there ever at any time a suggestion made to you by the members of that Association, either as members or as individuals, officially or in their private capacity that you should purchase, acquire or take an assignment of either the Arrott, the Ditheridge or the Lindsay patents or any of them?

A. No, sir; the idea of the acquisition of the patents was entirely my own.

Q. Was there ever any suggestion made by any member of that Association, either as a member of that Association or in his individual capacity, or by that Association or its executive committee, or any of its members, that you should acquire these patents, whether by purchase, by assignment or in any other way, and thereafter grant licenses to manufacturers of sanitary enameled iron ware? A. No, sir. 1

Q. Where did that idea come from? A. It came from me.

Q. How long had you had it in mind? A. Since 1908.

Q. By what was the idea suggested to you?

A. The idea to secure these patents was suggested to me by the experience that I had had in the electrical business and also, I saw the opportunity by the condition the enameling ware business was in, of buying these patents and making a considerable sum of money. 2

Q. And hadn't you also had some experience which you referred to with the Arrott patent in the manufacture of Seamless Steel Bathtubs?

A. Yes, sir; I had had experience with the Arrott patent, and the fact that we could not run our business without it, and I am sure that it is essential to all the other companies.

Q. Why did you undertake to acquire these patents?

A. Primarily to make money.

Q. For whom? A. For me. 3

Q. Did you ever have an understanding with any one or an agreement with any one that if you did acquire these patents that you would share with them in any way any money that you might make out of their exploitation?

A. No, sir.

Mr. NOBLE: Now, Mr. Grosvenor, I must close a title to some real estate which has been waiting for me to get back from Pittsburgh. That begins at one o'clock. I presume it will be over in an hour and a half, but if it is agreeable to you we will take an adjournment until three and then go on later this afternoon. 4

Mr. GROSVENOR: That is we will continue later than usual?

Mr. NOBLE: Yes.

At this point a recess was taken until three o'clock.

After Recess.

EDWIN L. WAYMAN, resumed the stand for a continuation of examination by Mr. Noble, and testified as follows:

By Mr. Noble:

Q. Will you please tell me now when you first began, after you severed your connection with the Seamless Steel Bathtub Company of Detroit, to negotiate to acquire the Arrott patent?

A. It was shortly after I came to Pittsburgh, I think in the latter part of August, I took the matter up with Mr. Ahrens with reference to buying the patent. I did not go much into detail with him because he referred me to Mr. Dawes, as he said it was a manufacturing proposition and to talk to him about it.

Q. Did you talk further with Mr. Dawes about the matter?

A. When I first took the matter up with Mr. Dawes he did not think very favorably of it. He said there were some people who were using it unlawfully and that they expected to sue them. I asked him not to do it, because I wanted to go more into details into the plans that I had in view, that is the purchase of it and the licensing of all the companies. I took the matter up again with Mr. Ahrens some time in September and gave him an outline of what I had in mind, but he said it was a pretty big subject and he did not have any opinion on it and referred me back to Mr. Dawes. I kept after Mr. Dawes and brought to his attention the fact that if I could buy the patent and license all the manufacturers—

Q. Of what?

A. Of sanitary enameled iron ware, that it would be the means of enabling certain companies to use the patent lawfully and that it would eliminate seconds from the market and that through the license a lot of odd sized articles, such as exist in lavatories, could be eliminated from the market. There were so many odd sized lavatories and goods of every description that they were beginning to be a nuisance to the jobber and the plumber and the architect and every one connected with the general industry. Also on account of the conditions in the jobbing trade, solid porcelain and vitreous chinaware were making great inroads and the jobbers generally were becoming dissatisfied with enameled iron ware, and

it was becoming very unpopular. Those were the subjects 1
that I emphasized with Mr. Dawes and referred to every time that I talked to him.

Q. Was vitreous china and solid porcelain competing in the market with enameled iron ware?

A. Solid porcelain did compete and competes now with what is known as the high grade tubs, the heavy tubs, that is, large sizes; and vitreous china competes especially in lavatories with enameled iron ware.

Q. Did you regard it as a wise commercial thing in the trade in sanitary enameled iron ware to attempt to eliminate seconds and improve the quality of the ware? 2

A. Yes. I think the production and especially the sale of seconds is the worst thing in the business. The market at the time I came to Pittsburgh was in such a shape that it was simply flooded with seconds, both by companies that did not use the Arrott patent and to some little extent by companies that were using the Arrott patent. These seconds were not disposed of other than as seconds by the manufacturers, but in a great many instances the plumbers would sell a second to a consumer as a first grade article. Now, the defects in a second are not apparent to the ordinary purchaser. Crazes or chips are not noticeable, that is before the 3
water is turned on, although some tubs that are shipped out show the defects apparently; but in a great many instances sinks or lavatories that are defective and sold as defective by the manufacturer are and have been palmed off on the consumer as a first grade article. Through this license and the general terms of it, the purchaser has been assured of getting exactly what he bought, that is, an honest article in every respect.

Q. Did you have these purposes in mind when you talked with Mr. Dawes in your negotiations with him to purchase the Arrott patent? 4

A. I think I made the most headway with Mr. Dawes on the manufacturing points involved.

Q. Did you express these ideas you just mentioned to Mr. Dawes?

A. Why, I talked to him all the time. I kept after him from day to day, either wholly or in part.

Q. You mean you expressed these ideas either wholly to him or in part? A. Yes, every time I saw him.

Q. Did you finally succeed in obtaining an option from him? A. Yes, sir.

Q. What date did you get your option from him?

A. On December 28.

Q. What year?

A. December 28, 1909; after all these talks we had had, then on that date—

Q. (Interrupting): Did you have all these talks on that day?

A. Oh, no; they were leading up to that day. On December 28 Mr. Dawes gave me an option on the Arrott patent.

Q. Was he acting for himself or for the Standard Sanitary Manufacturing Company?

A. I presume for the Standard Sanitary Manufacturing Company; certainly.

Q. What was the option?

A. Either for an exclusive license on a royalty basis for five years, they retaining a non-exclusive license, or if they would take a license they were to sell me the patents for the same length of time, five years, with the right to name the terms, conditions and provisions of the license agreement.

Q. Well, now, as you have stated it there, it apparently was that the right to name the terms and conditions under which you would grant licenses were connected with the option to purchase it. Is that what you meant?

A. No. It was connected with the exclusive license and the option to purchase it.

Q. Will you just state again, then, what the option was in the event that you took from them an exclusive license?

A. In the event that I took from them an exclusive license, I was to have full right to name the conditions, terms, &c., to my licensees.

Q. And if they sold you an exclusive license they were to retain a non-exclusive license, is that correct? A. Yes.

Q. Now, then, was there any part of the option relating to your purchase of the Arrott patent outright?

A. Well, I considered that the option on both.

Q. In the event of your purchasing the patent outright you proposed, then, if I understand you, to give them a license and other manufacturers of sanitary enameled iron ware?

A. Oh, yes, I intended to issue uniform licenses to all the

companies, including the Standard Sanitary Manufacturing Company.

Q. You say you intended to issue uniform licenses to all the companies, what do you mean by that?

A. That is, all the manufacturers of Sanitary enameled iron ware.

Q. How did you know that you could issue licenses to all the manufacturers of sanitary enameled iron ware?

A. Why, from the talks and letters that I had written, &c., I felt that I could license those companies just as I did finally license them.

Q. Now, after you had obtained the option upon the Arrott patent, what did you do?

A. I started to write letters to the different manufacturers and talked with them to get their consent to sign a license agreement with me under those patents.

Q. So, if I understand you, as soon as you got this option upon the Arrott patent you started out to see if you could get the manufacturers of sanitary enameled iron ware to take licenses from you? A. Yes, sir.

Q. Now will you tell me what you did to induce them to take licenses from you?

A. Well, I talked with them along the lines that I talked with Mr. Dawes.

Q. Just tell me what you did, will you, please?

A. I pointed out to them that through the terms of such a license as I was proposing, that seconds could be eliminated from the market; that the dimensions of goods could be standardized and simplified as to the number of certain types of goods; also the line as a whole could be made more profitable to the jobber, thereby increasing the use and distribution of the ware.

Q. What did you say to them about the patent upon which you had options?

THE WITNESS: I don't believe I understand your question.

Q. What did you say to the manufacturers whom you say you were trying to get to take licenses from you about the patents which you had under options, about the inventions covered by those patents?

A. Oh, I pointed out that the Ditheridge patent, upon which I had an option, and the Lindsay patent owned by the

1 Wolff Company on which I had an option, covered all the means that I knew of that goods could be manufactured by automatic processes.

Q. What did you say to them about the Arrott patent, its usefulness in the art, and so on?

A. Oh, well, I also elaborated on that—I talked to all of them on the lines that I talked to Mr. Dawes. I elaborated on that quite fully.

Q. You evidently omitted in your last answer the fact that you told them that you had an option on the Arrott patent. I call that to your attention and ask you if you dis-
2 cussed with them the Arrott patent?

A. Oh, yes, I did that right along. I told them that I had an option on the Arrott patent and on the Lindsay and Ditheridge patents, and was intending to license them all under these patents.

Q. Which was the basic patent? A. The Arrott patent.

Q. Then, when you said a moment ago that the Lindsay and the Ditheridge patents covered all the methods you knew of of manufacturing under an automatic process, did you consider the Arrott patent?

A. No, sir. The Arrott is the basic patent, and the Lind-
3 say and Ditheridge patents are infringements, as my counsel advised me. I also want to add the Nesbit patent which I was after.

Q. You mean you considered the Nesbit device as an infringement of the Arrott?

A. Yes, sir; I consider all automatic devices infringements of the Arrott patent. That is, any device in existence for sifting enameling powder on iron ware automatically.

Q. Have you ever taken any advice as to the Arrott patent being a basic patent?

A. Yes, sir; in Detroit I took the matter up with our at-
4 torney there when I was with the Seamless Steel Bathtub Company.

Q. What was the name of that attorney?

A. Mr. James Whittemore, also with Mr. Christy, of Christy & Christy.

Q. Now, going back a moment, Mr. Wayman, between the time that you talked with Mr. Ahrens on the second occasion which you mentioned, and December 28, when you got your option upon the Arrott patent from the Standard Sanitary Manufacturing Company through Mr. Dawes, did you have

any further talks with Mr. Ahrens, I mean in relation to buying the Arrott patent? 1

THE WITNESS: Between what time was that?

Mr. NOBLE: Read the question.

The stenographer then read the last question.

A. Yes, I had a short talk with him just before Christmas and he left the matter entirely with Mr. Dawes.

Q. So that your negotiations, if I understand you, in reference to the acquisition by you of the Arrott patent from the Standard Sanitary Manufacturing Company, were with Mr. Dawes chiefly? A. Yes, sir. 2

Q. Now, with whom did you conduct your negotiations to buy the Ditheridge invention of the Mott Company?

A. Mr. Hammann.

Q. And with whom did you conduct your negotiations to buy the Lindsay patent from the L. Wolff Company?

A. Mr. Clifford.

Q. You spoke of the Nesbit patent. To whom does that belong?

A. The Iron City Sanitary Manufacturing Company.

Q. Did you have any negotiations looking to the purchasing of that patent? A. Yes, sir. 3

Q. With whom were your negotiations?

A. Mr. John Kelly, the secretary and treasurer.

Q. Did you discuss with Mr. Kelly your plan to purchase his and the Arrott and other patents? A. Yes, sir.

Q. And did you tell him that you planned to attempt to get the manufacturers to take licenses from you under those patents? A. Yes, sir.

Q. Did you outline your plan to Mr. Kelly? A. Yes.

Q. Do you recall whether you outlined it to him in writing?

A. I think the latter part of December I gave him a general outline. 4

Q. Did you give a written outline of your plan to Mr. Dawes when you were conducting your negotiations with him? A. I think I did, yes.

Q. And to Mr. Hammann? A. Yes, sir.

Q. And to the Wolff Company? A. Yes, sir.

Q. Now, outside of those men, do you recall whether you gave a written outline of your plans to any one prior to December 28, 1909?

A. I think I gave one to Mr. Kohler. I am not positive about that. It was some time. Whether it was before or after I do not now remember.

Q. You do not recall whether it was in December or whether it was in January? A. No, I do not. I do not recall.

Q. When did you give an outline of your plans to such other of the manufacturers of sanitary enameled iron ware as you took this matter up with?

A. Well, from the first of the year on.

Q. After obtaining the option upon the Arrott patent and upon these other patents, what did you do with the manufacturers of sanitary enameled iron ware to induce them to take licenses from you?

A. I wrote them; I talked with the jobbers in various places and asked them to talk with the manufacturers and during the months of January and February I kept revising my licenses from time to time and finally asked some of the manufacturers in the latter part of February to meet me in Chicago on the first or second of March.

Q. Between that time you had, if I understand you, written and talked with substantially all the manufacturers of sanitary enameled iron ware? A. Yes.

Q. Is that correct? A. Yes, sir.

Q. Was the Arrott patent well known to them?

A. Yes, sir.

Q. And its utility and usefulness? A. Yes.

Q. What did you find was their attitude toward acquiring a license under the Arrott patent?

A. They were quite favorable towards securing the license that I was proposing.

Q. Did they express themselves with respect to the value of the Arrott patent and its usefulness, etc.?

A. Why, I don't recall any particular expression for the reason that the value of the Arrott patent has been pretty well known for several years and its usefulness in the business has been long established.

Q. So that in the conversations you had about it, if I understand you, you assumed and they assumed the value of the Arrott patent and its usefulness, is that what you mean to say? A. Yes, sir.

Q. Did you, during the months of January and February, 1910, take this matter up with all of the companies

to whom you later granted a license, or with their representatives? A. Yes, I think I did. 1

Q. Were your talks with them at your office or at their offices or where, as nearly as you can now state?

A. Well, principally at their offices. I do not remember at that time talking in my office regarding it with the exception of—let's see—with the exception of after the meeting of February 1.

Q. You talked at your office there? A. Yes.

Q. But except as to the talk which you had with the manufacturers on February 1 after the meeting, your talks with them during the months of January and February were chiefly in their own offices? A. Yes. 2

Q. For what purpose did you visit them in their various offices?

A. For the purpose of trying to induce them to enter into a license agreement with me under these patents.

Q. Did you tell the manufacturers when you talked with them what patents you had options on?

A. I know I told them about the Arrott patent. Whether I told all of them about the other two patents, I do not recall.

Q. Did you tell them as you went around to their various offices as you have described, what your plan was? 3

A. Yes, sir.

Q. And was your plan as you told it to them substantially as you later embodied it in the license agreements similar to Petitioners' Exhibit No. 9, known as the "License Agreement" and Exhibit 11, known as the "Jobber's License Agreement?"

A. Yes, sir; with some additions and eliminations.

Q. Now, you spoke a moment ago of talking with manufacturers on February 1, 1910 after a meeting. Will you please tell me what you said to them, or, if you cannot remember the words, then the substance of what you said? 4

A. I called their attention to the fact that I considered the principal trouble in the enameling business was the production and sale of seconds, and that under the general terms of the license which I was proposing that I thought the manufacturers could improve their goods, popularize them with the jobber by creating attractive trade conditions, and that goods to a great extent could be standardized. I asked for an expression from those present as to

what they thought of the plans that I had been talking to them about from time to time.

Q. Did any of them give any expressions of opinion?

A. Well, some did. Some would not commit themselves, but the majority said that they were in favor of the license as proposed.

Q. On page 30 of the printed record Mr. Grosvenor was asking you some questions about the February 1 meeting. He asked you: "Who did some of the talking?" And you replied: "A. I don't recall that any of them did any of the talking, with the exception of answering whether such a matter in its proposed rough form would meet with their approval." He then asked you: "What proposed rough form?" To which you replied: "A. I called attention to the fact that in my estimation the principal trouble with the enameling business was the fact that seconds—" at that point he interrupted you. What were you going to say, if you recall, in reply to that question?

A. That the principal trouble with the enameling business was the production and sale of seconds, and through this license agreement their production and sale could be prohibited.

Q. What is a second?

A. A second in the enameling business is an article that may be crazed or chipped or rough or containing dirty powder.

Q. Would it be fair to characterize it as any article of sanitary enameled iron ware which is defective in any way?

A. You might say defective inherently or unsightly through defective workmanship.

Q. Well, why was the manufacture and sale of seconds a bad thing, or the principal trouble, with the enameling business?

A. It tended to reduce the tone of the business in this way: Some companies were putting out quite a lot of seconds. Other companies were starting to make cheaper ware to meet the competition afforded by the companies whose output was large on seconds. It seemed to be hurting the business through the jobber right down to the consumer. In other words, the jobbers being forced in the position of handling seconds more or less were really at the mercy of the plumber, when the plumber had to

take out a defective article, although it having been sold as a first class article. 1

Q. What effect upon the trade in sanitary enameled iron ware did the manufacture and sale of seconds have, if any?

A. Why, it was beginning to make enameled ware unpopular with the jobbers. I know several jobbers told me they would not sell it unless they had to, that they were pushing solid porcelain and vitreous chinaware.

Q. Do you know from your experience as a manufacturer of sanitary enameled iron ware and as a salesman of it while you were with the Seamless Steel Bathtub Company, whether this condition which you found in the business of sanitary enameled iron ware was having a bad effect generally on the business? 2

A. It was. It was a very bad situation when I went to Pittsburgh. Those were the conditions when I went over there, and I was somewhat familiar with those conditions from time to time previously.

Q. Did you, after granting licenses to the various manufacturers to use the Arrott patent, find that the quality of the goods improved or changed in any way?

A. Well, of course, previous to my obtaining the Arrott patent quite a number of companies were using the Arrott patent. Others were not. But the fact that the sale of seconds was prohibited under that license agreement did improve the quality of the ware that was sold. 3

Q. I show you now Petitioner's Exhibits No. 108 and No. 109 and ask you whether the proposed rough form which you spoke of, in reply to Mr. Grosvenor's question, at the talk which you had on February 1, was similar to this?

A. I think Exhibit 109 was similar, but I do not recall No. 108. That (indicating Petitioner's Exhibit No. 109) I think was similar, but I do not recall No. 108.

Q. Petitioner's Exhibit No. 109 was somewhat similar to the rough form that you had in February, 1910, is that correct? A. Yes. 4

Q. You do not recall anything about Exhibit 108?

A. No, I do not.

Q. As I understand you, between the first of the year and during the months of January and February you revised the rough drafts which you had, from time to time, is that correct? A. Yes.

Q. Where did you get the ideas which you embodied in these proposed license agreements in these rough forms from time to time?

A. Why, from the electrical business and the licenses that were in existence when I was connected with the Western Electric Company.

Q. And you developed them somewhat while you were with the Seamless Steel Bathtub Company? A. Yes.

Q. What progress had you made in your efforts to get manufacturers to take licenses from you under the Arrott and the other patents during those two months?

A. Well, I had made progress to the extent that they were favorable towards taking a license, but I had not gotten the matter in such concrete form where I knew whether I could get the license agreement into effect or not. In order to come to a conclusion I called several of the manufacturers together in Chicago on March 2nd.

Q. Who was there?

A. There was Mr. McCrum, of the McCrum-Howell Company; Mr. Howard T. Gates, of the same company; Mr. Kohler, Mr. Murphy, of the J. M. Kohler Sons Company; Mr. Hoelscher, of the L. Wolff Manufacturing Company, Mr. Cline, of the United States Sanitary Manufacturing Company, and Mr. Torrance of the Standard Sanitary Manufacturing Company.

Q. How did those gentlemen come to be there?

A. Why, I requested them to come and meet me in Chicago.

Q. Now, what did you say to them that day?

A. Well, I was late in getting to Chicago that day, if I remember correctly, and I met them at the Chicago Athletic Club about 11 o'clock in the morning. I went over the subject matter of the license in general, that is the general ideas that I had been talking to them about and writing about, and I asked for some expression from them as to whether or not they would or would not enter into a license.

Q. As to whether the men there on behalf of their respective companies would accept a license from you?

A. Yes, sir; along the lines that I had been proposing.

Q. Now, after that meeting, what did you next do?

A. Well, I drew up a memorandum of agreement that evening.

Q. Where, and under what circumstances?

A. I had not been able to accomplish anything with these gentlemen at that meeting, and I thought I would write up a memorandum of agreement and see if I could not stir around and get some signatures. So that night I got it up at my mother-in-law's house and I had it typewritten the next morning at the LaSalle Hotel. 1

Q. Did anybody help you draw it up? A. No, sir.

Q. Or assist you in any way? A. No, sir.

Q. I show you Petitioner's Exhibit No. 3 and ask you if that is the instrument which you drew up that night and had written the next day? A. Yes, sir.

Q. Did you have any legal advice in drawing up that instrument? A. No, sir. 2

Q. Did you talk to any lawyer about it? A. No.

Q. Was this a proposed license agreement?

A. No; that is simply a memorandum of agreement to enter into a license agreement.

Q. In other words, this was the paper that you drew up to get some signatures to it to make progress, is that the point? A. Yes, sir.

Q. Now, did any of these provisions in here come from any of these other agreements that you have spoken of, when you were with the Seamless Steel Bathtub Company or the Western Electric Company—are they similar to them? 3

A. Some of the ideas are embodied in there, yes.

Q. This was drawn up and typewritten where?

A. At the La Salle Hotel, as I remember it. It was composed on March 2nd and written up on March 3rd.

Q. Where is the La Salle Hotel?

A. At Chicago, Illinois.

Q. Tell me to whom you first presented this for signature and the circumstances under which you obtained the various signatures?

A. I presented it to the L. Wolff Manufacturing Company in Chicago, Illinois, on March 3rd. That was the first signature. Then it was signed next by the— 4

Q. Won't you tell me whom you talked with in each place?

A. I talked with Mr. Hoelscher at the L. Wolff Manufacturing Company's place.

Q. Did he confer, when you presented it to him, and before signing it, with any other manufacturer of sanitary enameled iron ware?

Mr. GROSVENOR: I object to that.

Mr. NOBLE: If you know.

Mr. GROSVENOR: This witness cannot say whether the L. Wolff Company consulted any other manufacturers?

A. I know that he did not, because the other manufacturers left the city on the night of March 2nd and none of them had seen this paper before Mr. Hoelscher signed it.

Q. You did not even have the paper written out in rough form when you talked to the gentlemen on March 2nd, did you?

A. No, sir; I may have had some memoranda, but that is all.

Q. Did you have this paper written out when you talked to them? A. No, sir.

Q. Now, what company did you next present it to?

A. The Standard Sanitary Manufacturing Company.

Q. Where?

A. At Mr. Torrance's office in Pittsburgh, in the Bessemer Building.

Q. With whom did you talk? A. Mr. Torrance.

Q. Did he confer with any other manufacturer before signing it on behalf of the Standard Sanitary Manufacturing Company?

Mr. GROSVENOR: I object to that question also. Of course, this witness has no knowledge and cannot properly testify as to whether Torrance did or did not, before signing that, talk to the other manufacturers. If the question is limited to the actual time that Wayman was present and saw him, of course, I have no objections; but the question as it is asked is too broad.

Mr. NOBLE: Will you answer the question?

A. I am quite sure that he did not.

Q. Was it signed on the occasion of your visit there when you presented it to him?

A. I presented that to him on the fourth and he signed it the next day in his office.

Q. Were you present when he signed it? A. Yes, sir.

Q. Now, who was the next company to which you presented it?

A. The United States Sanitary Manufacturing Company,

to Mr. Cline, at his office in the Arrott Building, Pittsburgh. 1

Q. Did he sign it that same day?

A. Yes, as I recall it, he signed it that evening at his house.

Q. Now, what was the next company?

A. A. Weiskittel & Son Company, Mr. Anton Weiskittel, at Baltimore, signed that at the Belvedere Hotel.

Q. Were you present when he signed it? A. Yes, sir.

Q. Did he confer with any other manufacturer before signing it?

Mr. GROSVENOR: I object to the question unless it refers to the time—

2

A. As I recollect, his brother was present, but he did not confer with him before I got the signature.

Q. His brother is connected with the same company?

A. Yes, sir.

Q. Now, what was the next company?

A. The McCrum-Howell Company signed by Mr. Lloyd G. McCrum in his office.

Q. And did you present it to him there? A. Yes, sir.

Q. Did he sign it in your presence? A. Yes, sir.

Q. Did he confer with any other manufacturer before doing so? A. No, sir.

3

Q. Where is his office? A. New York City.

Q. Who is the next company?

A. The Blairsville Enameled Ware Company, New York City, signed by Mr. A. W. Shipman.

Q. Was it signed in your presence? A. Yes, sir.

Q. Between the time you presented it to Mr. Shipman and he signed, did he confer with any other manufacturer?

A. No.

Q. By the way, did the Blairsville Company take a license from you later?

A. No, they did not. The next signature was that of the National Sanitary Manufacturing Company, by F. G. Borden, president. 4

Q. Where did he sign it?

A. I don't recall whether he signed it in my office or in his office. It was in Pittsburgh that it was signed.

Q. Were you present when it was signed? A. Yes, sir.

Q. Between the time you presented it to him and the time that he signed it, did he confer with any other manufacturer of sanitary enameled iron ware? A. No, sir.

1 Q. Now, the next company?

A. The Barnes Manufacturing Company, at Mansfield, signed by T. R. Barnes.

Q. Where did he sign it? A. At his office in Mansfield.

Q. Were you present when he signed it? A. Yes, sir.

Q. Did he confer with any other manufacturer before signing it?

A. No, sir; the next is the Humphryes Manufacturing Company, by Mr. Reid Carpenter, the treasurer.

Q. Where did he sign it?

A. Signed it in the depot at Mansfield.

2 Q. Did you take it to him there personally? Yes, sir.

Q. And did he confer with any other manufacturer before signing it? A. No, sir.

Q. What is the next?

A. The Union Sanitary Manufacturing Company, by C. E. Gates, second vice-president and general manager.

Q. Where did he sign it?

A. At his office, at Noblesville, Indiana.

Q. Did you take it to him in person? A. Yes, sir.

Q. And did he confer with any other manufacturer before signing it?

3 A. No; the next is the Wheeling Enameled Iron Company, J. E. Wright, president. He signed it at the McClure House, Wheeling, West Virginia.

Q. Did you present it to him yourself? A. Yes, sir.

Q. Did he confer with any other manufacturer before signing it? A. No, sir.

Q. I want to ask you again: At the conference that you had with the gentlemen in Chicago on March 2nd, to which you have referred, this agreement had not then been prepared, is that right? A. Yes, sir.

Q. Nor had any other paper been prepared of which this

4 is a copy? A. No, sir.

Q. Did the persons who signed this instrument see it for the first time when you presented it to them at the various places which you have mentioned? A. Yes, sir.

Q. Do you recall between what dates you procured the signatures to this instrument which is Petitioner's Exhibit No. 3? A. Yes, between March 2 and March 17.

Q. Did you get any signatures on March 2? A. No.

Q. Between January 1 and March 2 or 3 when this in-

strument was prepared, was there any agreement between the manufacturers to sign such a paper? A. No, sir. 1

Q. Or any paper? A. No, sir.

Q. I mean, of course, any paper relating to the Arrott, the Dithridge or Lindsay patents or the proposed license which you were discussing with them?

A. No, sir; that is what I understood you to mean.

Q. And there was no such agreemnt? A. No, sir.

Q. This instrument, Petitioner's Exhibit No. 3, was not similar to any of the proposed drafts of a license agreement which you had previously had or sent to the various manufacturers? 2

A. No, that is simply a memorandum of agreement to enter into a license agreement; that is all.

Q. In visiting the various manufacturers whom you have testified you did visit, and procuring their signatures to Exhibit No. 3, and in writing to them relative to the proposed license agreement, and in talking with them relative thereto, did you visit them, write them or talk with them as the Commissioner of the Sanitary Enameled Ware Association or as an individual?

A. That was a personal matter altogether.

Q. What do you mean when you say it was a personal matter altogether? 3

A. That is, I mean by that I was not visiting them as Commissioner of the Sanitary Enameled Ware Association.

Q. What were you visiting them as, and for what purpose?

A. I was visiting them as an individual for the purpose of getting their signatures to a memorandum agreement to enter into a license agreement with me.

Q. And the previous visits which you made to them in January and February, and the letters which you wrote to them relative to your license agreement, did you visit them or write to them as Commissioner or as an individual? 4

A. As an individual.

Q. And what was your purpose in writing them and visiting them?

A. To get them to enter into a license agreement with me.

Q. What were you trying to do?

A. I was trying to make money by getting them to enter into a license agreement with me under these patents.

1 Q. I notice in looking through the exhibits that there are one or two letters relative to this license agreement which are signed by you and the word "Commissioner" is underneath them?

THE WITNESS: You mean with reference to this subject?

Mr. NOBLE: Yes.

THE WITNESS: Let me see them.

Mr. NOBLE: I call your attention to Petitioner's Exhibit No. 49?

2 A. Well, I presume that my stenographer in sending out the letters regarding both this business and the Association, typed that and I did not notice it. It was written, though, in the capacity of an individual and not as the Commissioner of the Sanitary Enameled Ware Association.

Q. Now, the word "Commissioner" appearing in this connection, was that an oversight or a mistake, or was it your intention that the word "Commissioner" should be there?

A. No, it certainly was not my intention. It was an oversight or a mistake.

3 Q. The work you were doing on these patents, was it or not done as Commissioner? A. No, sir.

Q. "No, sir," what?

A. It was not done as Commissioner but as an individual.

Q. For whom were you working in doing this work?

A. I think I was working for myself.

Q. Were you working for any one else? A. No, sir.

Q. When did you exercise your option and determine to buy the Arrott patent, that is, take an assignment of the Arrott patent absolutely, as distinguished from taking the exclusive license you spoke of?

4 A. That was on March 5, when the preliminary agreement was signed by Mr. Torrance of the Standard Sanitary Manufacturing Company.

Q. You mean the preliminary agreement which is known as Petitioner's Exhibit No. 3?

A. Yes, sir; when Mr. Torrance signed that I said, "This means you will sell me your patent?" And he said, "Yes, and take the details of it up with Mr. Dawes," which I did later.

Q. When was the option which you had with the Standard Sanitary Manufacturing Company reduced to writing? 1

A. About the middle of March, 1910.

Q. Who did it for you?

A. Bakewell and Byrnes, patent attorneys, Pittsburgh.

Q. Why was not that signed at that time?

A. As I recall it, Mr. Dawes sent the paper over to his patent attorneys, Messrs. Christy & Christy, to have them look over them and they were not returned until later, so that the paper was not signed until May 4.

Q. Was there any reason for delaying the signing of it?

A. No, sir.

Q. When was the option that you had with the Wolff Company to purchase the Lindsay patent reduced to writing? 2

A. About the same time as the Arrott.

Q. And why was not that signed until later?

A. I gave the papers, I think, to Mr. Hoelscher, in New York, and he mislaid them and I sent him duplicates some time in April, the latter part of April.

Q. And when was the agreement to assign the option reduced to writing? A. About the middle of March.

Q. When was it executed? A. 4.

Q. When was the option which you had with the Mott Company reduced to writing? 3

A. About the same time as the others, the middle of March.

Q. And when was that signed?

A. That was signed on May 5.

Q. Did any manufacturer of Sanitary Enameled Iron Ware suggest to you the taking over of these patents for the purpose of granting licenses under them? A. No, sir.

Q. Did any manufacturer suggest making an assignment of these patents over to you at all?

A. No, it was my own idea right from the start. 4

Q. Did any manufacturer, prior to your getting options on the Arrott or the other patents, jointly with any other manufacturer discuss the purchase of these patents and the making of such a license agreement as you later made, or one similar to it? A. No, sir; not that I recall.

Q. Well, did they? A. No, sir.

Q. Did you ever at any time get any idea from any of these defendants that they wanted you to get up this license agreement? A. No, not at all.

1 Q. I notice in looking through the exhibits that there are one or two letters relative to this license agreement which are signed by you and the word "Commissioner" is underneath them?

THE WITNESS: You mean with reference to this subject?

Mr. NOBLE: Yes.

THE WITNESS: Let me see them.

Mr. NOBLE: I call your attention to Petitioner's Exhibit No. 49?

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Q. Now, the word "Commissioner" appearing in this connection, was that an oversight or a mistake, or was it your intention that the word "Commissioner" should be there?

A. No, it certainly was not my intention. It was an oversight or a mistake.

3 Q. The work you were doing on these patents, was it or not done as Commissioner? A. No, sir.

Q. "No, sir," what?

A. It was not done as Commissioner but as an individual.

Q. For whom were you working in doing this work?

A. I think I was working for myself.

Q. Were you working for any one else? A. No, sir.

Q. When did you exercise your option and determine to buy the Arrott patent, that is, take an assignment of the Arrott patent absolutely, as distinguished from taking the exclusive license you spoke of?

4 A. That was on March 5, when the preliminary agreement was signed by Mr. Torrance of the Standard Sanitary Manufacturing Company.

Q. You mean the preliminary agreement which is known as Petitioner's Exhibit No. 3?

A. Yes, sir; when Mr. Torrance signed that I said, "This means you will sell me your patent?" And he said, "Yes, and take the details of it up with Mr. Dawes," which I did later.

Q. When was the option which you had with the Standard Sanitary Manufacturing Company reduced to writing? 1

A. About the middle of March, 1910.

Q. Who did it for you?

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Q. When was it executed? A. May 4.

Q. When was the option which you had with the Mott Company reduced to writing? 3

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A. That was signed on May 5.

Q. Did any manufacturer of Sanitary Enameled Iron Ware suggest to you the taking over of these patents for the purpose of granting licenses under them? A. No, sir.

Q. Did any manufacturer suggest making an assignment of these patents over to you at all?

A. No, it was my own idea right from the start.

Q. Did any manufacturer, prior to your getting options on the Arrott or the other patents, jointly with any other manufacturer discuss the purchase of these patents and the making of such a license agreement as you later made, or one similar to it? A. No, sir; not that I recall. 4

Q. Well, did they? A. No, sir.

Q. Did you ever at any time get any idea from any of these defendants that they wanted you to get up this license agreement? A. No, not at all.

1 Q. Did any of them contribute anything or agree to pay or offer to pay any part of the consideration which you paid to acquire these patents? A. No, sir; absolutely nothing.

Q. Did any of them pay or offer to pay you any money or valuable thing to get up these license agreements?

A. No; no, sir.

Q. Did the Sanitary Enameled Ware Association or its executive committee or any other committee assist you in any way in bringing about the acquirement by you or the assignments to you of the Arrott, the Ditheridge or the Lindsay patents? A. No, sir.

2 Q. In purchasing those patents did you discuss it with the owners together, or at their various places of business?

A. At their various places of business.

Q. And they were not together at the time? A. No, sir.

Q. You took your negotiations up with them singly, if I understand you? A. Yes, sir.

Q. And separately? A. Yes, sir; and at different places.

Q. And at different times? A. Yes, sir.

Q. Did the Sanitary Enameled Ware Association or its executive committee or any of its committees or any of its members request you or suggest to you or throw out any hint

3 to you that you do anything or take any steps toward acquiring these patents?

A. No, sir; it was my own conception altogether. It was my own idea.

Q. Did you ever discuss the question of buying or acquiring these patents with the Association or its executive committee or any of its committees? A. No, sir.

Q. Now, after you got this preliminary agreement, Petitioner's Exhibit No. 3, in shape and procured the signatures to it as you have testified, what did you next do?

A. I consulted Mr. Jackson of Noble, Jackson & Hubbard

4 of New York City. I had gotten the licenses into pretty fair form at that time and Mr. Jackson and I went over the various paragraphs together.

Q. Now, as a result of that talk with him, did you make any changes in your proposed license agreement and proposed jobber's license agreement? A. Yes, I made some.

Q. At the time you got these options on the Arrott patent did you know about the patent having been sustained in the courts? A. Oh, yes.

Q. How far back did you know it had been sustained?

A. Well, when I was with the Seamless Steel Bathtub Company. It was, I think, in May, 1907. 1

Q. At the conference which you had with Mr. Jackson about the license agreements, was anything said about the Arrott patent having been sustained?

A. Yes, I remember the first thing he asked me about was the Arrott patent, what it was and all about it, and I gave him the decisions on the Arrott patent and also, I think, a copy of the patent at the time.

Q. You left these papers with him? A. Yes.

Q. In your conferences were there other cases relative to these license agreements discussed? A. Yes. 2

Q. Do you recall what cases, or some of them, and what was said about them?

A. Why, I recall something about the Rubber Tire Case—

Mr. GROSVENOR: I object to this. It is immaterial and incompetent. It certainly can have no bearing on this case, what one lawyer said, and whether he expressed the opinion that the arrangement was or was not unlawful, the question now being before the Court for determination.

Mr. NOBLE: Will you read the question?

The last question was then read by the stenographer. 3

A. (Continuing): I recall something about the rubber tire case and the Goshen case and several other cases which Mr. Jackson called my attention to. Mr. Jackson stated that if the Arrott patent was useful and necessary in the business, that it was perfectly lawful for me to issue licenses as I had proposed.

Q. Did you ever discuss the license agreements or the jobber's license agreement with any other lawyers?

A. Yes, Mr. Byrnes of Bakewell & Byrnes and Mr. Christy of Christy & Christy, and also Governor Lyon of Lyon & Hunter. 4

Q. And what advice did they give you?

A. That they were lawful.

Q. Do you remember anything that they told you?

THE WITNESS: In respect to what?

Mr. NOBLE: Just read the question.

The stenographer then read the question referred to.

A. Why, in effect they told me that they were lawful.

Q. Did they explain to you what the rights, under the patent laws, of the owner of patents were? A. Yes—

Mr. GROSVENOR (interrupting): I make the same objection to all this line of questioning.

A. (Continuing): I remember a quotation from the Rubber Tire case that in his domain the patentee is czar and has a right to impose or exact such provisions and conditions as he sees fit.

Q. Now, in getting up these licenses and jobber's licenses, what were you trying to do?

A. I was trying to make money through exploiting the patents and licensing all the various manufacturers to use them.

Mr. NOBLE: Will you adjourn now?

Mr. GROSVENOR: Yes, counsel for the Government desires to notify counsel for the defendant that he will require one day for rebuttal, and he suggests that the hearing be had immediately after the close of the defendant's case on Saturday, that is, that we have a hearing in Pittsburgh on Monday. That will not require more than one day for the rebuttal.

Mr. NOBLE: I will try to arrange it. It will be in a day or two, anyhow. Mr. Honeyman also sent me word that he wants to take some testimony before the week is over.

Mr. GROSVENOR: All right.

At this point the hearing was adjourned until the following morning at 11 o'clock.

IN THE CIRCUIT COURT OF THE UNITED STATES, 1

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

vs.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

2

New York, N. Y., Post Office Building,

April 21, 1911.

Pursuant to adjournment the taking of evidence on behalf of the Defendants was resumed at eleven o'clock at the same place.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
HEBRERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Standard Sanitary Manufacturing Company and others.
ROBERT B. HONEYMAN, Esq.,
on behalf of the Colwell Lead Company, Jesse T. Duryea and B. O. Tilden.

3

Mr. HONEYMAN: Mr. Grosvenor, I would like to put two witnesses on the stand now, if you have no objection to my interrupting Mr. Noble's examination of Mr. Wayman, and if Mr. Noble has no objection.

Mr. NOBLE: That is all right.

Mr. GROSVENOR: Very well.

4

JOHN A. LEFFERTS, a witness of competent age, produced on behalf of the Colwell Lead Company, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY Mr. HONEYMAN:

Q. What is your business, Mr. Lefferts?

A. General Superintendent of the Colwell Lead Works factory at Elizabeth.

1 Q. You have charge of their factory where they manufac ture sanitary enameled iron ware? A. Yes, sir.

Q. And that is the only factory that they have where they manufacture sanitary enameled iron ware?

A. Yes, sir; as far as I know.

Q. Well, you would know if they had any other factory where they manufactured sanitary enameled iron ware?

A. Yes, sir.

Q. Have they any such? A. No, sir.

Q. How long have you been in the enameled ware business? A. Ten years.

2 Q. And you are familiar with the manufacture of sanitary enameled iron ware? A. Yes, sir.

Q. What do you know about the installation of the Arrott patent at the Colwell Lead Company? When did you install them?

A. We installed the pneumatic sieve, which I presume you mean by the Arrott patent, some time in the summer of 1909.

Q. Do you recall having any correspondence yourself with Mr. Dawes of the Standard Sanitary Manufacturing Company, in the spring of 1909?

A. I think it was earlier than that that I had some cor-
3 respondence with the Standard people. I don't know if it was with Mr. Dawes personally.

Q. But you personally had some correspondence with the Standard Sanitary Manufacturing Company? A. Yes.

Q. On the subject of your using their pneumatic sieve?

A. Yes, sir.

Q. Did you conduct the correspondence yourself with them on that subject?

A. No, during the course of that I found that it had been taken up by some one at our New York office also and they finished the correspondence, as I understood it.

4 Q. Then you were instructed to install the pneumatic sieve? A. Yes, sir.

Q. And you did so in the summer of 1909? A. Yes.

Q. And you have used it ever since? A. Yes.

Q. You are familiar with the old hand process of enameling generally in use for the past ten years in the manufacture of enameled iron ware? A. I am.

Q. Do you consider the Arrott or the pneumatic sieve an advantage over the ordinary hand process?

A. I would not have attempted to use it if I did not think so. 1

Q. You do, then, consider it an advantage? A. I do.

Q. What do you do with the product that you manufacture at Elizabeth?

A. Ship it to our New York warerooms, and office.

Q. Is that true of all your product there? A. Yes, sir.

Mr. HONEYMAN: That is all.

CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Lefferts, have you in the last year distinguished in your products between what was made at night and what was made in the day time? 2

THE WITNESS: Distinguished in what way?

Mr. GROSVENOR: Well, have you classified what was made at night as a different grade from that which was made in the day time?

A. No.

Q. You installed this Arrott patent in the summer or the early part of 1909, is that right?

A. To the best of my recollection that is right.

Q. Is it not a fact that during the whole of the time of the summer of 1909 or the larger part of that time, you have used the Arrott patent during the day and the old banjo dredge at night? 3

A. Only partly. We have used the Arrott dredger or patent at night as well as in the day time.

Q. Yes, but have you not used the banjo dredge during a large part of the past year at night time?

A. Before answering that as to the larger part of the night time, I would have to get some records showing when we stopped a certain quantity of night work.

Q. Is it not a fact that during the last year you have used the banjo dredge at night? 4

A. We have used it at night to a certain extent; yes, sir.

Q. Very largely? A. Not very largely.

Q. Well, how much?

A. I should have to figure that out, because when we have to run certain portions of our factory night and day outside of the enameling portion, we were compelled to use the banjo sieves because we had not rigged up all of our furnaces at that time for the pneumatic sieve.

1 Q. When did you have all your furnaces rigged up for the pneumatic sieve?

A. At the time we had them all rigged up it was in 1909, in the summer time.

Q. All of them?

A. Yes. All of them that we had built at that time.

Q. You had rigged up? A. Yes.

Q. Have you built any since? A. Yes.

Q. Have you rigged those up for the pneumatic dredger?

A. Yes, sir.

Q. Is it not a fact that since they have been rigged up
2 for the pneumatic dredger you have used the banjo dredge?

A. Yes.

Q. The hand dredge? A. Yes.

Q. Why is that?

A. Because we do not keep our compressor running at night time to keep up the compressed air for the pneumatic sieve.

Q. In other words, the advantage of the Arrott dredger over the hand dredge does not compensate or equal the cost of running the compressor, is that right?

A. That is about right, yes, for our sized plant.

3 Q. How many furnaces have you?

A. At present we are running two.

Q. And are you using today at night the hand dredge?

A. Yes, sir.

Q. And did you do that last month? A. I think we did.

Q. And did you do that the month previous?

THE WITNESS: That would bring it to February—

MR. GROSVENOR: Yes.

Q. You are confining me down to too narrow a point. I cannot recall at the present time whether we were running
4 at that time a double shift or not.

Q. But you find it cheaper, do you, to use the banjo dredge at night when you have only two furnaces running?

A. Well, we find it to our advantage rather than having the coal used and all the expense that would accrue if charged up alone against the pneumatic sieve.

Q. It is a fact, then, is it not, that it is possible to make good enameled ware by the hand dredge?

A. In the past we were compelled to make the ware whether it was good or bad by hand power.

Mr. GROSVENOR: Will you read the question to him, please? 1

The last question was then read by the stenographer.

Mr. GROSVENOR: Will you answer that, please?

THE WITNESS: Did I not answer that?

Mr. GROSVENOR: Read the answer and see if he cannot answer it more definitely?

The stenographer then read the question and answer referred to.

Mr. GROSVENOR: Can you answer that more definitely?

THE WITNESS: What is the question again, please? 2

The last question was again read by the stenographer.

A. I should not say it is not possible to make good enameled ware.

Q. Well, it is possible, is it not?

THE WITNESS: In comparison to the pneumatic sieve, do you mean?

Q. Is it possible to make good enameled ware with the hand dredge?

A. I think I have admitted that it is. And, it depends upon the definition of the word "good." 3

Q. At the beginning of the cross examination you testified that today you do not distinguish in classification the products made in the day time and that made at night time; is that right? A. We make no distinguishing features.

Q. Do you have charge of the making of the powder?

A. Yes.

Q. Is that an important part of the business?

A. We so call it, yes.

Q. Well, do you consider it so? A. Yes, sir.

Q. And the making of the slush, is that an important part of the business? A. Yes. 4

Q. Are those secrets in the business, the composition of the slush and the composition of the powder?

A. To a great extent they are.

Q. By a great extent, what do you mean? The formula of stating the proportion in which the ingredients are mixed is a secret, is it not?

THE WITNESS: At our particular plant?

Mr. GROSVENOR: Yes.

1 A. I believe it is a secret. I don't believe anybody else knows about it but myself.

Q. And you would not let anybody else know about it, would you? A. Hardly, willingly.

Q. How about the slush coat, would you let anybody know about that? A. The same thing applies to that.

Q. Did you take any part for the Colwell Lead Company in the entering into of the license agreement with Wayman? A. No.

RE-DIRECT EXAMINATION BY Mr. HONEYMAN:

2 Q. Each manufacturer of enameled iron ware, to a certain extent, thinks his own enameling powder has the best formula or composition for getting the best results, doesn't he? A. Yes, sir.

Q. And you think your formula or the proportion in which you used the ingredients gives you a superior enamel, about which you will not let the other manufacturers know? A. Yes, sir.

Q. And the same thing is true of all enameled ware manufacturers? A. Yes, sir.

Q. And the same is true as to the slush coat? A. Yes.

3 Q. You struggled with the question of what was considered good enameled ware. That word "good" is relative to your mind? A. Yes, sir.

Q. Do you make as many seconds as were made with the old hand dredge?

A. Yes, sir; we do it purposely because we only make seconds when we are called on to do so.

Q. You make them now deliberately whereas before you did not? A. Yes.

Q. You can make a better product with the pneumatic than with the old hand process, generally speaking?

4 A. Yes.

Q. Is the product made by the pneumatic dredger better as a whole than that made by the old fashioned hand process?

A. We consider it in its general application better than any of the old hand processes that we know of.

Q. Is it not a fact that you make more small ware at night than you do in the day time?

A. That would depend upon whether we were running full, Mr. Honeyman.

Q. For the last couple of months you had a strike at the factory? A. Yes, sir. 1

Q. Is that why you only run two furnaces?

A. Sometimes we run two and sometimes one and sometimes three. It depends on the foundry.

Q. And the strike is limiting your product? A. Yes, sir.

Q. And has for some months done so? A. Yes, sir.

Q. For how long? A. Since February, the first part.

Q. And your economy in doing without the pneumatic dredger for the moment is based on the conditions that you were running under in the last few months? A. Yes, sir.

Q. When you are running full down there, do you use the pneumatic dredger at night? A. Yes. 2

RE-CROSS EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Lefferts, do you know Mr. Varley who worked with you? A. Yes.

Q. He testified that when he was with you in 1909 during the night time you used the banjo dredge after the installation of the Arrott dredger. Does that agree with your recollection?

Mr. HONEYMAN: I object to the question. The witness knows nothing about the testimony of the gentleman named, and the witness can only answer as to his own knowledge and not in the form of corroborating the testimony of some other witness, which may or may not be correctly stated by counsel. 3

Mr. GROSVENOR: Will you read the question?

The last question was then read by the stenographer.

Mr. GROSVENOR: Let me read you Mr. Varley's testimony.

Mr. HONEYMAN: I object to that. This witness should be allowed to testify of his own knowledge and recollection and not otherwise. 4

Mr. GROSVENOR (reading): "A. When I left they were using the pneumatic in the day time and the old banjo, as they called it, at night.

Q. That was in September, 1910? A. Yes, sir.

Q. How many furnaces had they?

A. They had three when I was there.

Q. Were they running them all?

1 A. They were running them all when I left; yes, sir.

Q. I suppose at night by using the hand dredge they saved the expense of running the compressed air plant?

A. That was the idea by using that dredge at night to cut out the expense of running the plant for the enameling department."

What have you to say to that, does your recollection agree with that?

2 THE WITNESS: Was that in 1910?

Mr. GROSVENOR: Yes.

A. There might have been times when we used the banjo sieve at night in case of a break down. We always had them handy in case anything should stop on us.

Q. And you are using them today at night?

THE WITNESS: The pneumatic sieve?

Mr. GROSVENOR: The banjo sieve.

A. We do use them occasionally, yes.

Q. How active a part does Dr. Duryea take in running your plant? A. We do not see him very often down there.

3 Q. Is he advised whether you use the hand dredge or the Arrott dredger?

A. I don't suppose I ever communicated with him in detail about it.

Q. Would he know whether you used the hand dredge at night? A. I don't believe he would.

Q. He would not know, then, whether you used the Arrott dredger at night, would he?

A. I suppose that if I had reported to him that we had installed the Arrott dredger he would.

Q. His information, then, is confined to what you tell

4 him, isn't it? A. To some matters, yes.

EXAMINATION BY Mr. NOBLE:

Q. Will you explain a little more fully what you mean by saying that you make seconds by design? You mean that you make seconds when you get an order for them?

A. Yes.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

EDWIN L. WAYMAN, a witness of competent age, heretofore produced and sworn, called by the Colwell Lead Company, testified as follows: 1

DIRECT EXAMINATION BY MR. HONEYMAN:

Q. Did you have any conversation with Dr. Duryea prior to May, 1910, concerning the Colwell Lead Company taking a license under the Arrott patent or any other patent, prior to May 1st, 1910? A. No, I don't recall any.

Q. You had met Dr. Duryea in connection with general meetings of the Association? A. Yes.

Q. But that was before you took up the question of the Arrott patent? A. Yes, sir. 2

Q. And you do not recall having any conversation with him on the subject of the Arrott or any other patents or taking a license from you or anything of that sort prior to May, 1910? A. No.

Q. Do you recall seeing him in May, 1910, and having some conversation with him? A. Yes, sir.

Q. State when you saw him?

A. I think it was early in May at the Doctor's house over in Brooklyn.

Q. Do you remember the conversation? 3

A. I came to see him with reference to having him accept a license from me under the Arrott patent. I don't recall all the conversation, but I remember the Doctor said he was not particularly interested inasmuch as he intended to sell out his business at that time.

Q. Is that all you recall of the conversation? A. Yes.

Q. Did you see him subsequently? A. Yes.

Q. At that first meeting about which you have just talked, did the Doctor say that he would take a license under the Arrott patent from you?

A. He said he was not interested at that time because he expected to dispose of his business. 4

Q. And then you saw him subsequently? A. Yes.

Q. And what took place between you at the subsequent meetings? A. He accepted the license.

Q. What did he say and what did you say as far as you recall?

A. As I remember it, he said that he did not want to get tied up in any license agreement at that time that would prevent him from meeting local competition.

Q. What did you say?

A. I got up a special letter in connection with his license agreement to cover that situation.

Q. You say the Doctor said that he did not want to take any license agreement that would interfere with his meeting local competition? A. Yes.

Q. Did you know at that time whether the business of the Colwell Lead Company was local or not?

A. Oh, yes, it is well known that it is local.

Q. What did he say to you about what he meant by this local competition, if anything?

A. Why, he said he was more particularly a jobber than a manufacturer and that his business was mostly local and that he had that in mind.

Q. Did you say anything to him about your licenses necessarily being uniform, or anything of that sort?

A. I told him I was issuing uniform licenses to all the manufacturers, but I did offer to give this amendment that was afterwards reserved in the agreement.

Q. So that he could be free in the matter of local competition? A. Yes.

Q. Did you see him at any time other than the two occasions of which you have spoken prior to beginning of this suit? A. Not that I recall; no, sir.

Q. Did you at any time prior to the beginning of this suit say anything to Dr. Duryea or Mr. Tilden about the meetings in Chicago, Pittsburgh, New York or Mt. Clemens?

A. Not that I recall; no.

Q. Do you recall any conversation on that subject at the time you were at the Doctor's house early in May, and in the subsequent interviews that you had with him in May, any conversation about these meetings?

A. No, I did not.

Q. Do you know whether or not Dr. Duryea did engage in free and open competition in New York after he had taken the license from you?

A. Yes, I had a great many complaints about it.

Q. You had a great many complaints about it? A. Yes.

Q. What was your idea in going to the Doctor to get him to take a license from you?

A. Well, I was after all the revenue that I could get, and that was why I wanted to see if the Doctor would not take a license agreement.

Q. You asked him a dollar a day for all the furnaces that he had down at Elizabeth? A. Yes, sir. 1

Mr. GROSVENOR: It is not a dollar a day. The license agreement shows that it is five dollars a day.

Mr. HONEYMAN: I have finished my examination of this witness, who has been called as a witness on behalf of the Colwell Lead Company. I desire to know if the Government now desires to cross examine Mr. Wayman as a witness for the Colwell Lead Company?

Mr. GROSVENOR: Counsel for the Government will cross examine Mr. Wayman at the close of the examination of the said witness by the other counsel for the defendants, the said examination now continuing. 2

Mr. NOBLE: I desire to say that my time for taking testimony is limited to tomorrow, and if the Government brings out any facts on cross examination which makes it necessary for me to call any other witnesses, it is necessary for me to know that now, and I cannot wait until tomorrow night or Monday when it will be beyond my power to produce additional evidence, my time being limited to to-morrow. Do you still stick to your decision, Mr. Grosvenor? 3

Mr. GROSVENOR: Counsel for the Government declines to cross examine at this time, the witness being still on the stand for the defendants.

Mr. NOBLE: I beg your pardon. I consented to have my examination interrupted at the request of Mr. Honeyman and permitted Mr. Wayman to be called as a witness for the Colwell Lead Company.

Mr. HONEYMAN: I stated to Mr. Grosvenor, I think, that I would call Mr. Wayman in New York as a witness for the Colwell Lead Company. I made that statement in Pittsburgh, and understood that was perfectly agreeable to everybody concerned, inasmuch as the time for all the defendants, and particularly the Colwell Lead Company, was limited to this week. 4

Mr. GROSVENOR: Counsel for the Government made no objection to the examination and says that we should now proceed.

Mr. Honeyman: Counsel will assume that the Government waives its right of cross examination.

1 Mr. NOBLE: Counsel for the witness and the other defendants and witnesses will not have his examination interrupted at a future time for cross examination by the Government of a witness for the Colwell Lead Company.

EDWIN L. WAYMAN, resumed the stand for further examination by Mr. Noble, and testified as follows:

EXAMINATION BY Mr. NOBLE:

2 Q. You stated in your examination yesterday, Mr. Wayman, that, at the time that you left Detroit, or rather at the time you applied for the position as Commissioner of the Sanitary Enameled Ware Association, you had in view the purchase or acquisition of the Arrott patent. Why did you want to buy the Arrott patent? What was your purpose? What was your plan?

A. Well, when I was with the Seamless Steel Bathtub Company I fully realized the value of the Arrott patent, and from my talks with the other manufacturers I knew that they did also, and I knew that if any one could pur-
3 chase or get control of that patent they would have the key of the situation to the enameling business and could make a lot of money out of it.

Q. Now, did you pursue the purpose which you have just described? A. Yes, sir.

Q. Have you made money or a great deal of money out of the acquisition of the Arrott and the other patents?

A. Well, I don't know how much I have made or will make. I had hoped to make considerable; just what I will make I don't know, in view of all the circumstances.

Q. Have you shared any portion of the money that you
4 have made or received with any one else? A. No, sir.

Q. Did you have any agreement of any kind with any one at any time that if you made any money or profit out of the exploitation of the Arrott and these other patents you would share the profit or money coming to you with them? A. No, sir; absolutely not.

Q. Were you ever asked to make such an agreement?

A. No, sir.

Q. Were any of the steps that you took in the acquisition of the Arrott, the Dithridge and the Lindsay patents

and the licenses which you subsequently granted under them, undertaken for the benefit of any one other than yourself? A. No, sir. 1

Q. Was there any agreement between you and the Standard Sanitary Manufacturing Company or the L. Wolff Manufacturing Company or the J. L. Mott Company relative to the options which you obtained on these patents or the assignments which you later obtained on these patents, other than that which is expressed, namely, the agreement to assign and the assignment itself? A. No, sir.

Q. This instrument expresses the entire understanding between you? A. Absolutely.

Q. After you had obtained the option on these patents, did you take up the question of getting manufacturers of sanitary enameled iron ware to accept licenses from you? 2

A. I did.

Q. And when did you begin your efforts, immediately after December 28? A. Yes.

Q. Did you take up the question of trying to get the Union Sanitary Manufacturing Company to take a license from you? A. Yes, sir.

Q. Under the Arrott and these other patents?

A. Yes, sir.

Q. What did they say about taking a license under the Arrott patent? 3

A. Mr. Gates said that he would be willing to take a license under the Arrott patent. He said they had been using it for several years and had received several notices from the Standard Sanitary Manufacturing Company to discontinue, and he expected to hear from them at any minute.

Mr. GROSVENOR: I object to this as hearsay. Of course, the statement of Mr. Gates is not proper evidence as to whether or not he had received such notices and for that reason the question is objected to. 4

BY MR. NOBLE:

Q. Did he assign as a reason, among others, for his willingness to take a license under the Arrott patent, the fact that they had been using it and that the Standard Sanitary Manufacturing Company had warned them to desist?

A. Yes, he expected to get into trouble at any minute about it.

Mr. GROSVENOR: I note the same objection.

Q. What do you mean by "he expected to get into trouble?" A. Why, that his company would be sued.

Q. Mr. Gates had what relationship to the Union Sanitary Manufacturing Company? A. He is general manager.

Q. And did you afterwards grant a license to that company? A. Yes, sir.

Q. Did you take up the question of granting a license under the Arrott and the other patents mentioned with the National Sanitary Manufacturing Company? A. Yes, sir.

Q. What did they say about this Arrott and the other patents? A. Mr. Borden told me—

Mr. GROSVENOR: I object to this as hearsay.

A. (Continuing): Mr. Borden told me he had received several notices from the Standard Sanitary Manufacturing Company with reference to discontinuing the use of the Arrott dredger. He said that he had sort of been bluffing the matter off, but he knew that he was infringing and he would be willing to take a license.

Mr. GROSVENOR: Counsel objects to this line of questioning as being manifestly improper, for the reason that it violates the rules against hearsay, and suggests that the proper way to prove these notices is to produce the correspondence either from the Standard Sanitary Manufacturing Company or from these companies to whom it was addressed.

By Mr. NOBLE:

Q. Did Mr. Borden assign to you, in your conferences with him, the statements you have just related as his reasons, among others, for his willingness to take a license under the Arrott patent? A. Yes, sir; he did.

Q. What relationship does Mr. Borden bear to the National Sanitary Manufacturing Company?

A. He is president.

Q. Did you afterwards grant a license under these patents to the National Sanitary Manufacturing Company?

A. Yes, sir.

Q. Did you take up the question of granting licenses or of procuring the McCrum-Howell Company to take a license from you under the Arrott and these other patents? A. Yes.

Q. I mean by these other patents the Dithridge and Lindsay patents? A. Yes, sir.

Q. What did they say about taking the licenses under these patents? 1

A. Mr. McCrum said that he would be willing to take a license, and he subsequently told me that if it was necessary to either do without it or have it, he would rather pay the full $5 a day if he could not get it for $1 a day net. That is what he thought of the patent.

Q. Had they been infringing before your talk with them?

A. Yes, sir.

Mr. GROSVENOR: I object to the question unless it is shown that the witness has some personal knowledge indicating his capacity to answer that question. 2

Q. They told you they had been infringing, did they?

Objected to as hearsay.

A. Yes, sir.

Q. Those conversations took place with Mr. McCrum?

A. Yes, sir.

Q. And those were among the reasons which he assigned to you for being willing to take a license under the Arrott and other patents? A. Yes, sir.

Q. What relationship does Mr. McCrum bear to the McCrum-Howell Company? A. President. 3

Q. Did you take up the question of procuring the Weiskittel Company of Baltimore to take a license from you under the Arrott, the Dithridge and the Lindsay patents?

A. Yes, sir.

Q. And what did they say about taking a license under those patents?

A. My recollection is that Mr. Weiskittel told me that they had had the equipment down there for some time but did not use it after they got notice to discontinue its use from the Standard Sanitary Manufacturing Company. 4

Q. The equipment for the Arrott patent, do you mean?

A. Yes, sir.

Mr. GROSVENOR: Note that it is understood that all this line of testimony is objected to as violating the rules of hearsay.

Q. Did the Weiskittel Company thereafter take a license from you? A. Yes, sir.

Q. And did Mr. Weiskittel assign in this conversation

which you have related as his reason for taking a license under the Arrott patent, that he had discontinued its use after having gotten the notice from the Standard Company to quit using it?

A. I don't know if they had been using it or not, but they had the equipment down there.

Q. Did they afterwards take a license from you under these patents? A. Yes, sir.

Q. Who spoke to you about these patents and these licenses? A. Mr. Anton Weiskittel.

Q. What relationship does he bear to the Weiskittel Company? A. I think he is president.

Q. Did you take up the question of granting a license or procuring the Wheeling Enameled Iron Company to take a license from you? A. Yes, sir; I saw Mr. Wright.

Q. Who is Mr. Wright? A. He is the president.

Q. And what did he say to you about taking a license under the Arrott, the Lindsay and the Dithridge patents?

A. I don't recall whether he had been using it or not. He did not say. But he was very glad to get a license. I imagine he had not been using it.

Q. Did you thereafter grant to him a license under the Arrott, the Dithridge and the Lindsay patents? A. Yes, sir.

Q. And did you take up with the Wolff Company the question of taking a license under the Arrott, the Dithridge and the Lindsay patents? A. Yes, sir.

Q. What did they say with respect to taking a license from you under the Arrott patent?

A. Mr. Clifford told me that they had had some trouble in the past with the Standard Sanitary Manufacturing Company over the Arrott patent and that they had discontinued—

Q. Discontinued what?

A. Discontinued using the Arrott patent, and they had made a settlement and he was using this electric dredger of his own.

Q. Which is known as the Lindsay patent?

A. Yes, and had taken the matter up with his attorneys and was advised that he was undoubtedly infringing the Arrott patent, as it was very broad—

Mr. GROSVENOR: Note the same objection as above stated.

BY MR. NOBLE: 1

Q. Did he assign these facts which you have just related, as one of his reasons, among others, for being willing to accept a license under the Arrott patent? A. Yes, sir.

Q. Did you thereafter grant his company a license under the Arrott patent? A. I did.

Q. That is the L. Wolff Manufacturing Company of Chicago? A. Yes.

Q. Did you take up the question with the J. L. Mott Company of taking a license under the Arrott patent?

A. Yes, sir. 2

Q. What did they say about taking a license from you under the Arrott patent?

A. Mr. Hammann said at one time when I talked to him when I first heard of his patent, that is the application for the patent, that he had in at the time—

Q. Known as?

A. The Dithridge patent, that he thought it was a good patent; but I called his attention to the fact that any process that was automatic infringed the Arrott patent, and he thought that was a good way of getting out of the difficulty that he might run into.

Q. That he might run into? 3

A. Yes, if he kept on using the process which he was using then.

Q. And which was known as the Dithridge invention?

A. Yes, sir.

Q. And that is one of the reasons he assigned to you for taking a license under the Arrott patent? A. Yes, sir.

Q. Did you thereafter grant the J. L. Mott Company a license under the Arrott patent? A. Yes, sir.

Q. Did you take up the question of granting a license under the Arrott, Lindsay or the Dithridge patents with the Cahill Iron Works of Chattanooga, Tennessee? A. Yes, sir. 4

Q. With whom did you conduct your negotiations?

A. Mr. Caldwell.

Q. What relationship does he bear to that company?

A. He is president of the company.

Q. And what did he say about taking a license under the Arrott and the other patents from you?

A. Well, the first time that I saw him with reference to the matter I did not obtain much satisfaction from him. The

1 second time I saw him I went down to look at an electric dredger that he had, and when I saw it I told him that he was undoubtedly going to infringe the Arrott patent with it, and that he would be subject to a suit for infringement. I afterwards bought that patent, or rather the application for the patent. The patent was not issued.

Q. Did you grant to the Cahill Iron Works a license under the Arrott patent? A. Yes.

Q. And the circumstances which you just related were among the reasons assigned to you for taking a license under the Arrott patent?

2 A. Yes, sir; Mr. Caldwell told me that.

Q. Did you take up the question of asking the Kerner Manufacturing Company to take a license from you under the Arrott, the Dithridge and the Lindsay patents?

A. Yes, but I do not recall what my conversations were with them.

Q. Did they subsequently take a license from you?

A. Yes.

Q. Did you take up the question of granting a license to the Blairsville Enameled Ware Company of Blairsville, Pennsylvania? A. Yes, I saw Mr. Shipman.

3 Q. What relationship does Mr. Shipman bear to that company? A. Secretary and treasurer, I think.

Q. What did he say about taking a license under the Arrott patent?

A. He said they had been using it in the past, but had discontinued it. He was working on some automatic device of their own that they had applied to patent attorneys for a patent on, and he was very much pleased with it. I told him that anything that was automatic was an infringement on the Arrott patent. He came to no different conclusion, though, as to taking a license agreement.

4 Mr. GROSVENOR: Note the same objection to all of that testimony.

Q. Did you take up the question with the McVay-Walker Company? A. Yes, sir.

Q. And with whom did you have your conversations?

A. Mr. Alex. Walker.

Q. Did they take a license under the Arrott patent?

A. Yes, I had been in Mr. Walker's place some time in 1908, and I knew he was using the Arrott dredge, and I told

him he would undoubtedly save himself some trouble by executing a license agreement with me under those patents. 1

Q. And he admitted to you that the fact that he was infringing the Arrott dredger was among the reasons for his taking a license from you? A. Yes.

Q. Which he assigned to you? A. Oh, yes.

Q. How about the Clymer Manufacturing Company, did you take up the question with them?

A. I don't recall talking to them. It is quite possible that I did, but I don't recall what I may have said to them.

Q. Did they ever take a license from you? A. No.

Q. Did you take up the question of granting a license to the Barnes Manufacturing Company, under the Arrott patent? A. Yes, sir. 2

Q. Did they subsequently take a license from you?

A. Yes.

Q. I have inquired about these various companies to whom you granted licenses; now I would like to ask you this question: Did you ever decline or refuse to give a license to any of the manufacturers of sanitary enameled iron ware under these patents upon similar terms or equally favorable terms as those you granted to other persons? A. No, sir.

Q. And you offered licenses under your patents to all the manufacturers upon substantially the same terms? 3

A. Yes, sir.

Q. And 16 manufacturers accepted licenses from you, is that correct? A. Yes.

Q. Being the defendants named in this suit? A. Yes.

Q. And you have described generally your negotiations with them in the testimony which you have given?

A. Yes, sir.

Q. Do you know how many furnaces there were in the factories of the manufacturers to whom you granted licenses? A. 195. 4

Q. Do you know how many furnaces there were in the factories of the manufacturers of sanitary enameled iron ware who did not take licenses from you?

A. Approximately 55, as near as I can find out.

Q. That makes 250 altogether. Now, have you any means of knowing what percentage of the trade in sanitary enameled iron ware the manufacturers to whom you granted licenses do or had? A. No.

Q. Have you ever known at any time? A. No, sir.

1 Q. Just tell me what your information is—or rather, did these manufacturers to whom you granted licenses make reports to you of the number of furnaces they had in operation.

A. Yes, sir.

Q. Will you please state to me how many furnaces there were in operation in the factories of those manufacturers to whom you granted licenses?

A. Well, taking into consideration the reports I have that are complete, the average number of furnaces operated was about 70 per cent.

Q. That is to say that instead of operating 195 they would
2 be operating about 136, is that right? A. Yes.

Q. Have you taken the trouble to keep yourself informed as to the business of the manufacturers who did not take the licenses from you?

A. In general, yes. Mr. Kelly testified that he was running full, and so did Mr. Kohler, and from the information I received from the other places, they were about in the same position; that is, all the unlicensed furnaces.

Q. How many furnaces are there in Mr. Kelly's factory?

A. Twelve, I believe.

Q. And in Mr. Kohler's? A. I understand there are 24.

3 Q. Assuming that your information that the other factories were running full is substantially correct, and taking the output of those furnaces and the furnaces of the licensed manufacturers as representing the total output of sanitary enameled iron ware, what would be the percentage of the output of the licensed manufacturers compared with the non-licensed manufacturers, I mean as compared to the aggregate?

Mr. GROSVENOR: I object to that question, as the witness has only testified as to his knowledge as to two factories, Kelly's and Kohler's making 36 fur-
4 naces. He has shown no grounds for the knowledge of or information respecting the other manufacturers.

A. On the basis of the actual furnaces in operation, the licensed manufacturers were doing about 60 per cent. of the business as against 40 per cent. of the unlicensed manufacturers.

Q. Does the number of furnaces operated enable you in any way to determine the volume of business done by the manufacturers? A. No, no.

Q. So that when you speak of these percentages you don't know whether they represent the percentages in volume of business or dollars and cents? A. No. 1

Q. Was there any way in which any of the licensees under your licenses could know or ascertain through you or through those licenses in any way what the output was of any other of the licensed manufacturers? A. No, sir.

Q. What was the information that you gave to the various manufacturers in connection with the number of furnaces operated or the output of the various manufacturers?

A. I simply sent them a statement showing the total number of furnaces and also approximately what they would equal in furnace days. Then I gave them the per cent. of their operation as compared with the per cent. of the total operation. It was a simple matter of information. There was no way in which I or they could tell what that would amount to in dollars and cents. 2

Q. Could they, from that data you gave them, figure it out? A. No, sir.

Q. And the data which you did give them was sent to them subsequent to the period which those reports covered, was it not? A. Yes.

Q. The Government alleges that the manufacturers to whom you did grant licenses controlled 85 per cent. of the trade in sanitary enameled iron ware; is that correct? 3

A. No, sir.

Q. In one of the resolutions which were adopted at the Hotel Astor on the 29th or 30th of March, there was something said about 85 per cent.?

A. Well, at that time I did not have the correct number of furnaces.

Q. So that those statements about the percentages are inaccurate? A. Yes, sir.

Q. Is the statement which you have given this morning as nearly an accurate statement as you can make of the furnace capacity of the manufacturers whom you licensed and those who did not take licenses from you? 4

A. Yes, I think that is a very fair comparison and about correct.

Q. But it does not represent the volume of business or the dollars and cents in business? A. No, sir.

Q. Aside from the manufacturers of sanitary enameled iron ware, to whom you granted licenses, what other manu-

1 facturers of sanitary enameled iron ware are there in the United States of whom you know?

A. The Blairsville Enameled Ware Company, of Blairsville, Pennsylvania; the Clymer Manufacturing Company, Indiana, Pennsylvania; Louis Lipp Company, Cincinnati, Ohio; the Iron City Sanitary Manufacturing Company of Pittsburgh; J. M. Kohler Sons Company, Sheboygan, Wisconsin; the Washington Iron Works of Los Angeles, Cal.; Volrath & Sons Company, Sheboygan; the Jones-Holloware Company, Baltimore; there is some concern in Columbus, I think by the name of Pheil.

2 Q. In calculating the percentages of the furnaces you assume that all furnaces are of equal capacity, do you not?

A. Yes.

Q. I call your attention to paragraph 4 of Petitioner's Exhibit No. 3 and ask you what was your purpose in that provision?

A. Well, I thought I would get up an outline of the prices and then call a committee of the manufacturers together and get their ideas and suggestions and work out the details myself.

Q. This Petitioner's Exhibit No. 3 was not intended to
3 be a license agreement at all?

A. No, that is simply a memorandum of agreement to enter into a license agreement.

Q. So that in inserting paragraph No. 4 your purpose was, if I understand you, to work out the prices, go over the result of your work with some manufacturers so as to check up whether or not you had made correct calculations as to cost and so on before you finally worked them out in final form; is that correct or substantially correct?

A. Well, there was a lot of work to be done on which I wished to get their assistance in grouping material and so
4 forth with regard to sizes of goods, and it was necessary and material that I consult with them and get their suggestions.

Q. And that was the purpose for which you put this provision in? A. Yes.

Q. In the objects of the Sanitary Enameled Ware Association it is provided, as stated in Defendants' Exhibit No. 22, paragraph 6 of the Objects of the Association": "The Association is not formed to control or regulate prices of goods manufactured by its members." After you became Commissioner was there ever any action taken by the Asso-

ciation or its executive committee to regulate prices or to control prices? A. No, sir. 1

Q. Upon direct examination you were asked some questions by the Government as to the minutes of the meetings of February 1, 1910; were those minutes ever submitted to a subsequent meeting of the Association or of its executive committee? A. No, sir.

Q. Mr. Wayman, on the direct examination by Mr. Grosvenor, as counsel for the Government, Exhibit for Identification No. 4, offered by the counsel for the defendant, being a letter dated April 29, 1910, and addressed to Mr. William A. Myler, Pittsburgh, and signed by Mr. Eugene H. Sloman, 2 was marked. I now show you that letter and ask you if you know what it is? A. Yes, sir.

Q. What did you say? A. Yes, sir.

Q. Well, please state what it is.

A. It is a letter addressed by Mr. Eugene H. Sloman to Mr. W. A. Myler, Pittsburgh.

Q. What else is it? Did you deliver that letter to Mr. Myler? A. Yes, sir.

Mr. NOBLE: I wish to offer that in evidence as Defendants' Exhibit No. 23 and have it read on the record in connection with the testimony given by Mr. 3 Wayman on his direct examination.

Letter referred to was then marked and filed as "Defendants' Exhibit No. 23."

Mr. NOBLE: This letter reads as follows:

"Detroit, Mich., April 29, 1910.

"Mr. W. A. Myler,
Pittsburgh, Pa.

"My dear Sir.

"Mr. E. L. Wayman was in to see about a subject 4 we had often discussed while associated with the Seamless Steel Bath Tub Company, namely all of the Patents owned by the Standard Sanitary Mfg. Co. and others used in the economical manufacturing of Enameled Ware. As I understand it he has negotiated far enough along so that now it becomes a question of money to carry out his plan.

"It is my disposition to help him both financially and otherwise as our relations have been such that a

brotherly feeling exists between us. On account of my experience and negotiations in Seamless and real estate I have used up the limit of my credit at our local bank till I begin to realize on properties and securities I own. Consequently I cannot borrow on collateral even which ordinarily they would accept from me or any of their customers. Therefore in order to assist Mr. Wayman I would like to deposit with you certain stock collateral, namely Universal Electric Welding Co. of New York, certificate for which I have given to Mr. Wayman in exchange for which you could loan him an amount of priced or quoted stock on which he could borrow an amount equal to his needs of the banks here in Detroit. He will explain to you the method and manner by which this can be accomplished as we have both gone over the situation carefully. I am in hopes to have the actual money at a later date and will then pay his obligation and retire any collateral that may be used for his purpose and benefit. The stock I am loaning Mr. Wayman has a value of about $75 per share and will increase as Mr. Wayman is aware of on account of advantageous royalty contracts they have. By assisting Mr. Wayman in the premises you will be doing him a favor without risk to yourself which I will very much appreciate and hope to be able to reciprocate at some future period.

"Awaiting your decision,

"Believe me, Most sincerely,

"(Signed) Eugene H. Sloman."

BY MR. NOBLE:

Q. I now show you a receipt dated April 29, 1910, and marked "Exhibit No. 5 for identification offered by counsel for the defendants" and signed by E. L. Wayman and ask what that is?

A. That is a letter addressed by me to Mr. Sloman acknowledging receipt of 300 shares of the Universal Electric Welding Company's stock, for the purpose of negotiating a loan for the purchase of the several enameling patents referred to.

MR. NOBLE: I offer that in evidence as Defendants' Exhibit No. 24.

Letter referred to was then marked and filed as "Defendants' Exhibit No. 24." 1

Mr. NOBLE: This receipt reads as follows:

"Detroit, Mich., April 29th, 1910.

"Received of Eugene H. Sloman Certificate No. 1030 for 300 shares of Universal Electric Welding Co.'s stock which I am using for the purpose of obtaining a loan on, which money I propose using to purchase certain enamel ware patents which will afterwards be leased out on royalty and I hereby agree out of the first money available to pay such loan as I may have negotiated and return said stock to said Eugene H. Sloman at the earliest date. 2

"(Signed) E. L. Wayman."

BY MR. NOBLE:

Q. I now call your attention to the endorsement on the back of this Exhibit No. 24, being marked "Defendants' Exhibit No. 6" for Identification, the endorsement being dated April 29, 1910, and signed by E. L. Wayman and ask you what that is?

A. That is an agreement that the value of the stock that I borrowed was $75 a share and I obligated myself for that amount if not returned in seven months. 3

Mr. NOBLE: I offer that in evidence as Defendants' Exhibit No. 25.

Endorsement referred to was then marked and filed as "Defendants' Exhibit No. 25."

Mr. NOBLE: This endorsement reads as follows:

"April 29th, 1910.

"I hereby agree and consent that the value at present of this stock is $75.00 per share, for which I obligate myself if the stock is not returned within seven (7) months from date. 4

"(Signed) E. L. Wayman."

BY MR. NOBLE:

Q. That is the stock which you borrowed from Mr. Sloman and known as the—

A. The Universal Electric Welding Company's stock.

Q. What did you do with that stock?

A. I gave it to Mr. Myler of the Standard Sanitary Manufacturing Company.

Q. And he in exchange for that gave you what?

A. Loaned me 100 shares of the Standard Sanitary Manufacturing Company's stock.

Q. And it was on those shares of Standard Sanitary Manufacturing Company's stock that you obtained your loan at the bank in Detroit about which you have previously testified, is that correct? A. Yes, sir.

Q. I show you now Exhibit No. 7 for identification offered by counsel for the defendant, being a letter dated May 2, 1910, at Pittsburgh, and addressed to Mr. Sloman and signed by Mr. Myler. What is that?

A. That is a letter from Mr. Myler to Mr. Sloman acknowledging Mr. Sloman's letter of April 29, together with certificate of the 300 shares of the Universal Electric Welding Company's stock.

Q. Was that letter delivered by you to Mr. Sloman or sent by you to Mr. Sloman or by Mr. Myler to Mr. Sloman?

A. By Mr. Myler to Mr. Sloman.

Q. You saw that letter written, though, didn't you?

A. Yes, sir.

Mr. NOBLE: I offer that in evidence as Defendants' Exhibit No. 26.

Letter referred to was then marked and filed as "Defendants' Exhibit No. 26."

Mr. NOBLE: This letter reads as follows:

"STANDARD SANITARY MFG. CO.
"General Offices
Pittsburgh, U. S. A., May 2, 1910.

"Mr. Eugene H. Sloman,
Detroit, Mich.

"Dear Sir:

"Your letter of April 29th together with certificate of Universal Electric Co. #1030 for 300 shares of stock in the name of Maurice Lachman, and endorsed in blank by him, has been handed to me by Mr. Wayman, and is satisfactory as per your letter.

"Yours truly,
"(Signed) W. A. Myler."

BY MR. NOBLE: 1

Q. I now show you a letter dated August 20, 1910, addressed to Mr. Myler at Pittsburgh, and signed by E. L. Wayman, and I ask you what that is?

A. That is a letter written by me to Mr. Myler with reference to the expressing of these 100 shares of Standard Sanitary stock upon which I negotiated the loans at Detroit and asking him to return to Mr. Sloman the stock of the Universal Electric Welding Company.

MR. NOBLE: I offer that letter in evidence as Defendants' Exhibit No. 27. 2

Letter referred to was then marked and filed as "Defendants' Exhibit No. 27."

MR. NOBLE: This letter reads:

"Detroit, Mich.,
Aug. 20th, 1910.

"Mr. W. A. Myler,
Pittsburgh, Pa.

"Dear Mr. Myler:

"Enclosed herewith I am enclosing to you Certificate D 230 for 100 shares of Standard Sanitary Mfg. Co.'s stock upon which my loan here in Detroit was negotiated, which I have paid today in full, Mr. Sloman being with me and he requests at your early convenience that you return to him the certificate for 300 shares of the Universal Electric Welding Co.'s stock deposited with you. He desires me to express to you his appreciation of the favor shown and it is needless to say that I add my own. With kindest regards, I am 3

"Yours truly,
"(Signed) E. L. Wayman. 4

"P. S. For safety I am sending this by express."

BY MR. NOBLE:

Q. Was that Universal Electric Welding Company's stock returned by Mr. Myler to Mr. Sloman? A. Yes, sir.

Q. Do you know whether or not that stock has since been sold? A. Yes, sir.

Q. At how much? A. $10,000.

Q. How much would that be a share?

A. $33 1/3 a share, but that was sold at a sacrifice, as I understand.

Q. But the 300 shares of the Universal Electric Welding Company's stock which you gave to Mr. Myler in exchange for his loan to you of the 100 shares of Standard Sanitary stock have since sold for $10,000?

A. Yes, sir.

Q. Mr. Wayman, it is alleged by the Government that you and the other defendants in this suit, or some of them, entered into an agreement to eliminate and suppress competition in sanitary enameled iron ware. I now ask you, did you ever have any agreement or understanding with any of these defendants to restrict trade or to lessen the sale or trade in sanitary enameled iron ware? A. No, sir.

Q. Did they ever have any agreement among themselves to that effect of which you have any knowledge or to which you were a party? A. No, sir.

Q. You did grant to these various defendants licenses under your patents, did you not? A. Yes, sir.

Q. And in connection with the granting of those licenses did you attempt to work out a plan whereby the freight rates would be equalized? A. Yes.

Q. What was your purpose in doing that?

A. To enable all the manufacturers to compete in any part of the country.

Q. Did it have that effect?

A. Yes, sir; manufacturers got into territory that they never could before.

Q. How about the jobbers?

A. The jobbers could sell at a profit in any part of the country.

Q. Could a jobber in any part of the country sell in any other part of the country? A. Yes, sir.

Q. In competition with the jobber who was in that part of the country?

A. Yes, and in competition with the manufacturer.

Q. Do you know of instances where jobbers did extend their business into other parts of the country where they had not been in business before?

A. Well, I cannot recall any particular instance now, but I have talked with jobbers who have stated that—

Mr. GROSVENOR: I object to that as hearsay. 1

Mr. NOBLE: Go ahead.

A. (Continuing): That they could do business in any part of the country.

Q. And did they regard that as an advantage to them?

A. Certainly.

Q. Now, it is alleged by the Government that the discounts allowed to jobbers under these licenses that you granted were arrived at by agreements among the defendants. I ask you is that true? A. No, sir.

Q. Were there ever any agreements among the defendants, that is, the parties to this suit, whereby the discounts 2 allowed to jobbers were stipulated or agreed upon?

A. No, sir.

Q. How were the discounts and preferentials and rebates in your price list established, and by whom?

A. They were established by myself after consultation with some of the manufacturers.

Q. Did the manufacturers fix them? A. No, sir.

Q. Who did fix them? A. I did.

Q. Were they fixed as a result of the manufacturers' judgment, or your judgment? A. My judgment.

Q. You were asked some questions upon your direct ex- 3 amination by the Government relative to the provisions in the price list as to boxing and crating. What was your purpose in making the provisions which were made relative to boxing and crating?

A. Why, I required that all enameled ware be either boxed or crated, so as to insure its safe delivery.

Q. Why was that an advantage to you, if any?

A. Well, it protected the goods made under my patents and extended their use by arriving safely at their destination, and it did away with a great deal of trouble that had theretofore existed. Because, in some instances the manu- 4 facturers had shipped goods nested and without any cratings whatever.

Q. What is nested? A. Nested together.

Q. That is, one bathtub set inside the other?

A. Yes, sir; but that applied more to small ware than to bathtubs.

Q. Will you tell what nesting means?

A. One piece packed into another with straw between them.

Q. Were goods shipped in that way injured?

A. Yes, sir; and there was a great deal of complaint about it.

Q. Was there any tendency on the part of the straw to mark them or discoler the enamel?

A. Well, I remember when I was with the Seamless Steel Bathtub Company the tubs we had outside with the straw between them and the crates becoming very much discolored; that is, the acid in the straw got into the enamel and it was impossible to get it out, and I imagine that goods shipped in straw or simply nested in straw may have been damaged by the weather.

Q. These goods that were outside were some that were exposed to the weather in some way? A. Yes, in shipping.

Examination Suspended.

At this point a recess was taken for one hour.

After Recess.

EDWIN L. WAYMAN, resumed the stand and testified as follows:

EXAMINATION BY MR. NOBLE (continued):

Q. Who is Mr. Gregg?

A. He is the advertising manager of the Standard Sanitary Manufacturing Company.

Q. Does he attend to their printing of matters that they want to send out to their customers? A. Yes, sir.

Q. Mr. Wayman, what was the object or purpose that you had in view in inserting paragraph 10 in the Jobbers' License Agreement, which is similar to Petitioner's Exhibit No. 11?

A. Why, that was to promote the manufacture and the sale of licensed ware under my patents.

Q. Will you please explain how that would increase the sale of ware manufactured under your patents?

A. Well, by encouraging the jobber to handle as much ware as possible, I would naturally get larger royalties through increased output of the manufacturers.

Q. Would it have any effect also upon improving the standing of sanitary enameled iron ware in the trade? 1

A. Yes, I think it would. The fact that only first grade ware was sold would of course elevate the general business conditions among the jobbers.

Q. And as I understood your testimony there had grown up a situation where there was very strong competition with other lines of ware?

A. Oh, yes, such as vitreous chinaware and solid porcelain.

Q. And was this provision put in to increase and make a staple product on the market the sanitary enameled iron ware? 2

A. Yes, sir; and to force a decrease as far as possible in the sale of solid porcelain and vitreous china.

Q. Now, it is alleged in the Government's Petition that no defendant will sell to a jobber not recognized by all the defendants as a legitimate jobber. Let me give you the exact reference: The Government alleges that the defendants will not sell their products to any person or company who is not recognized by all the defendants as a jobber and whom all the defendants consider what is denominated here as a legitimate jobber; is that true? 3

A. No, sir; the manufacturers were permitted to make contracts or license agreements with any person that they wished to sell to who was a jobber.

Q. Was there any agreement by any of the defendants that they would not sell to any person or company who was not recognized by all the defendants as a jobber?

A. No, sir.

Q. Was there any agreement that they would not sell to any person except a person recognized, as it is denominated here, as a "legitimate jobber?" A. No, sir.

Q. Did you attempt to pass upon who jobbers were? 4

A. No, sir.

Q. Was there any standard stipulated by you by which it should be determined what a jobber was? A. No, sir.

Q. So far as any individual licensee was concerned, was he permitted to pick out who his own jobbers were to be under his license agreement? A. Absolutely.

Q. Did you so state to the licensees? A. Yes, sir.

Q. There was introduced in evidence by the Government an exhibit referred to as the "Blue Book" which was said

1 to contain a list of jobbers, constituting a part of what was known as Petitioner's Exhibit No. 30. I show you a copy of that exhibit, which is found in the record, and ask you whether there was any understanding between you and the manufacturers that they should sell only to jobbers whose names appear in that book? A. No, sir.

Q. Was there any understanding among the defendants other than yourself that they would not sell to any jobber unless his name was mentioned in that exhibit?

A. No, sir; that is simply the names of the principal jobbers in this country. The license agreements were not
2 only executed with the people in this book, but with others.

Mr. GROSVENOR: That Blue Book does not comprise the entire Exhibit No. 30. I would not like to have the questions addressed to the witness give that impression. Exhibit No. 30 consists of the Blue Book referred to and a typewritten sheet attached thereto.

BY MR. NOBLE:

Q. In replying to my last questions did you understand that Exhibit No. 30, about which I inquired, consisted of the names included in what was called the "Blue Book"
3 and other names of jobbers not in the "Blue Book?"

A. Yes, sir.

Q. Now, the Government alleges that all purchasers and users of sanitary enameled iron ware are obliged to pay the same prices which have been and are now fixed by the defendants by mutual agreement and without competition with each other. I ask you whether that is true?

A. No, sir.

Q. Was there ever any agreement, mutual or otherwise, between the defendants to name or fix the prices at which the goods should be sold to the users or purchasers?

4 A. No, sir.

Q. As a matter of fact, did your license agreement or jobber's license agreement or price list have anything to do with the prices which the users should pay for the articles manufactured under your patents?

A. No, that simply covered the price from the manufacturer to the jobber and from the jobber to the plumber. The plumber made any price that he saw fit to the consumer.

Q. Was there competition between the manufacturers of

sanitary enameled iron ware who had licenses from you among themselves in their sales to the jobbers? 1

A. Yes, the license agreements show that through the differentials, and also from the fact that all of the jobbers could ship their goods into any particular territory.

Q. So that if I understand you, the manufacturers all competed with each other in the manner you have described, through every part of the United States. A. Yes, sir.

Q. Now, was there any competition between jobbers under the license and jobber's license agreements and price lists which you established under your patents?

A. Well, not on the enameled ware itself, but there was competition on the rest of the articles which went with the enameled ware, which, in a great many territories, were sold at cost or below cost. 2

Q. You mean such as the fittings which go to make up the completed article?

A. Such as supply pipes and bath cocks and waste pipes, etc.

Q. Was there competition among the jobbers in all the territory throughout the United States even on the Sanitary Enameled Iron Ware?

A. Yes, any jobber in any part of the country could compete with any jobber in any other part of the country. 3

Q. In the manner you have described jobbers competed with each other, and although they were selling your sanitary enameled iron ware, each man might compete for the same job and offer different prices? A. Yes, sir.

Q. Now, there is something said in the contracts about lump sum bids. Just explain your purpose in putting that in and its effect?

A. Well, by the provision of lump sum bids was meant that the prices established on the enameled ware must be shown separately from those of the fittings. In other words, the enameled ware and the fittings should not all go in under any one lump sum price. 4

Q. You did not attempt to exercise any control over the fittings, did you?

A. No, all I controlled was the enameled ware.

Q. Manufactured under your patents? A. Yes, sir.

Q. Was there any provision at all as to the price to be paid by the ultimate consumer under your contracts?

A. No, sir.

1 Q. As a matter of fact, do you know whether or not the price paid by the ultimate consumer varied between different plumbers with whom they dealt?

A. Well, I should say they did, because I know of no price that the plumber was obliged to charge to the consumer.

Q. Now, the Government alleges that you and the other defendants devised means by which each of the defendants was advised of the amount of the output of each of the other defendants, in order that they could thereby limit and restrict their respective outputs, as was advisable?

2 A. There was no such agreement. I was interested in seeing each factory make as much as they could.

Q. Did your royalty depend upon the number of furnaces in operation? A. Yes, sir.

Q. Well, was there any agreement among the defendants to limit and restrict their respective outputs? A. No, sir.

Q. At any time during the period between June 1 and December 31, 1910, was there any agreement among the defendants, or between you and any of the defendants, to restrict or limit their output in any way? A. No, sir.

Q. Did anybody ever suggest doing it? A. No, sir.

3 Q. Did you in any way advise the defendants at any time, or any of them, what any other defendant had produced? A. No, sir.

Q. Did you know yourself? A. No, sir.

Q. You only knew the number of furnaces in operation from the reports sent to you? A. That is all.

Q. And you did not know what their output was in pieces or in dollars and cents, is that correct?

A. That is correct.

Q. Now, I call your attention to Petitioner's Exhibit No. 132, parts 1, 2 and 3, and ask you if you will point 4 out there what you meant by saying that you gave them simply the percentage of furnaces in operation?

A. Well, we will take as an example the first item on the list; that is the Barnes Manufacturing Company. Now, in my report to the Barnes Manufacturing Company I advised them that the average per cent. of the total operations of all the furnaces was 69 per cent.

Q. That is to say that 31 per cent. were idle?

A. Yes, sir.

Q. During the months referred to in part 1 of Exhibit No. 132? 1

A. Yes, sir. In this particular instance Barnes operated exactly the same as the average per cent., 69 per cent. Now, taking the case of the United States Sanitary Manufacturing Company; I notified them that the average operation was 69 per cent.; then that their operation was 98½ per cent. or 29½ per cent. above the average.

Q. Is that (indicating) a copy of the report which you sent, Petitioner's Exhibit No. 132?

A. That is a copy of the report that I furnished the Government. 2

Q. This is not a copy of the report, then, that you sent to the manufacturers? A. Oh, no.

Q. This is a compilation? A. Yes.

Q. Oh, I see; well, now, in the reports that you sent to the manufacturers themselves was there any statement which showed the amount of output of any of their competitors? A. No, sir.

Q. Was there any statement which showed the number of furnaces operated by their competitors? A. No, sir.

Q. And this report which you sent to them was a report compiled by you after the period—after you had received the individual reports from these manufacturers and naturally compiled for that period? A. Yes, sir. 3

Q. For the month of June when would you receive the reports of the various manufacturers?

A. Well, early in July.

Q. And how long did it take you to compile those reports and send them out to the various manufacturers?

A. Well, all the reports did not come in at the same time. I sent out the individual reports as soon as I had received all the reports from the individual companies. It is quite possible that a report covering the month of July did not go out until September. 4

Q. So was there any way in which you knew what the manufacturers were doing during the month of July in July? A. No, sir.

Q. There was no means by which you could inform the others, then? A. No, sir.

Q. Was there any arrangement between the manufacturers themselves so that they could know during any month what their competitors were doing? A. No, sir.

Q. For example, in the month of June, what per cent. of all the furnaces you had under license were in operation? A. 69 per cent.

Q. Did you ever send to any of the manufacturers a report similar to Exhibit No. 132 and its various parts? A. No, sir.

Q. Did the report which you sent to the manufacturers show the percentage of any other manufacturer than the one to whom you sent it? A. No, sir.

Q. Was there any way, so far as you know, by which it could be figured out from the data which you gave what anybody else had done during the month? A. No, sir.

Q. So that the allegation that there was any sort of means by which any of the defendants could be advised of the output of any of the others, is totally incorrect, is that true?

A. That is true.

Q. Now, there is an allegation in the petition that the defendants have divided the United States up into territorial zones, that this was done by agreement and no jobber is allowed to sell outside of his zone, and thereby the trade is restricted and the manufacturers are able to hold the jobber firmly to the agreement?

A. No, sir; that is not so; a jobber can sell in any zone in the country.

Q. Was there any agreement to divide the country up into geographical territories or zones? A. No, sir.

Q. Who did that? A. I did.

Q. And what was the purpose for that?

A. It was principally for the convenience of the jobber in knowing what the goods would cost him and at what price to sell his goods in his particular town and in adjacent territory.

Q. Could a jobber in Zone 1 purchase goods to be delivered in Zone 3 and sell them there? A. Yes, sir.

Q. And that is true of every other zone? A. Yes, sir.

Q. He could buy goods in his own zone too and ship them anywhere if he wanted to, could he not? A. Yes, sir.

Q. And he could do so at a profit? A. Yes, sir.

Q. You say it was to enable the jobber to know how much his goods cost him that you divided for convenience the country into geographical zones. Just explain what difficulty there had been previously for the jobbers to know what the goods would cost him on any given order having reference to freight rates, etc.?

A. Well, buying goods in the west and having them 1
shipped to the east there was always an uncertainty as to exactly what goods would cost delivered, that is, per piece. Take a lavatory; it would be hard to keep a record to show consistently what that lavatory would cost delivered in another town. Now, I took the principal jobbing points in the east and added certain freight additions covering freight to other points.

Q. In the country?

A. Yes. Now the cost or selling price on a five foot tub in San Francisco was simply the price f. o. b. Pittsburgh plus the freight, and in some cases less than the freight. 2

Q. And that was true generally of all the zones throughout the country? A. Yes.

Q. Now, the Government alleges that there was co-operation of the defendants in fighting other manufacturers and dealers in sanitary enameled iron ware who had not become parties to the alleged combination. Was there any combination? A. No.

Q. Of any kind? A. No, sir.

Q. Was there any co-operation in fighting the manufacturers of sanitary enameled iron ware among the defendants?

A. No, sir. 3

Q. Now, they say as one of the means to that end you were refusing to sell jobbers sanitary enameled iron ware who were buying from manufacturers who were not members of the combination. I asked you a while ago your purpose in putting in clause No. 10 of the jobber's license agreement, did I not? A. Yes.

Q. Will you please explain again, in connection with this allegation, what your purpose was?

A. That was for the purpose of encouraging the manufacturer to sell licensed ware. Now, in a great many instances I gave manufacturers permission to sell unlicensed 4
ware and I gave jobbers permission to buy ware from unlicensed manufacturers.

Q. But your purpose in putting that clause in was what?

A. To further the sale by the manufacturer of licensed ware under my patents.

Q. Was there any combination among the defendants to force other manufacturers out of business? A. No, sir.

Q. As a penalty for not coming in and taking a license from you? A. No, sir.

1 Q. The Government has alleged that you, or the defendants, have established and are enforcing a system of severe penalties which are imposed on such members of the combination as depart from the rules respecting prices and terms of sale fixed by the combination, that is to say, if any defendant sells at discounts or prices or terms of sale other than those agreed upon by all of the defendants, he is obliged to forfeit or pay a heavy penalty which is deposited in the common fund of all the defendants. Was there any system of penalties which was established by these defendants and which were to be imposed upon the members of this alleged combination?

2 A. No, sir.

Q. Was there any combination among these defendants?

A. No, sir.

Q. Did the licenses which you granted to the various licensees express the entire relationship existing between you and the several licensees? A. Yes, sir.

Q. Was there any other relationship, contract or understanding between the various licensees themselves?

A. No, sir.

Q. Or between the licensees and yourself? A. No, sir.

Q. Did you ever impose any penalties upon jobbers for
3 failure to sell at the resale prices? A. No, sir.

Q. Now, Mr. Wayman, the Government alleges that the defendants knew that the contracts—they call it a combination—which you made with these various defendants were unlawful. How many years have you been dealing with contracts under patents?

Mr. GROSVENOR: I object to that as immaterial and irrelevant and incompetent and having no bearing on the issues in this case. Furthermore, that licenses under patents are of a different character and vary from each other.

4 Mr. NOBLE: Go ahead, Mr. Wayman.

A. Well, I was with the Western Electric Company eleven years. Just how many years while I was with that company I was familiar with license agreements, I am unable to state, but for several years I was familiar with the fact that the electric appliances and apparatus were sold under these license agreements.

Q. And the various licenses which you granted to the

various manufacturers under these patents were substantially similar? A. Yes, sir. 1

Q. Had you ever heard any one suggest that the electrical agreements with which you were dealing were unlawful?

A. No, sir.

Q. Until Mr. Kohler suggested to you—as I believe you testified in your direct examination—that the plan you had in view of granting licenses under the Arrott and other patents was in conflict with the laws of Wisconsin and later suggested that it might conflict with what is known as the Sherman Anti-Trust Act, had you had anybody suggest to you that your plan was not lawful? 2

A. Not that I recall. I was always under the impression that the license agreements which I was proposing were absolutely lawful.

Q. After Mr. Kohler made that suggestion did you further consult with your counsel? A. Yes, sir.

Q. And what did they advise you?

A. They advised me that the license which I had proposed was entirely lawful, and Mr. Jackson gave me several extracts of cases which I in turn gave either to Mr. Kohler or Mr. Murphy; I don't recall which.

Q. So that at the time you granted these licenses to these various defendants did you believe that they were entirely lawful? A. Yes, sir. 3

Q. The Government alleges that these various patents were assigned to you as a ruse; that the assignments were not absolute, that they were conditional, that they were not in good faith. Is there any truth in those allegations?

A. No, sir; these patents were assigned to me in good faith. It was my own idea, and I believe it to be strictly lawful and I believed that the people who executed those agreements did also.

Q. Was there any agreement between you and the companies from whom you purchased the Arrott, the Dithridge and the Lindsay patents other than those that are expressed in writing? A. No, sir. 4

Q. How was it, Mr. Wayman, that you did not in accordance with the full period on which you had the options, buy them for that full period but only bought them for two years?

A. Well, that was as much as I could finance them for.

Q. That was the limit that you found you could finance them?

A. Yes, sir; that was all the money I could raise.

Q. Besides Mr. Sloman, did any one assist you in financing this operation? A. No, sir.

Q. Now, the Government alleges that you were selected by agreement of the defendants to act as the assignee of these patents. I think they call you an "ostensible licensor"; is there any truth in that statement?

A. No, sir; absolutely no truth in that at all.

Q. Did anybody ever suggest any such thought to you?

A. No, sir.

Q. The Government alleges also that these three patents were assigned to you for a nominal consideration and subject to reassignment as a part of this ruse or apparent or ostensible transaction. Is that true? A. No, sir.

Q. What were the circumstances under which you procured the assignments of these patents?

A. Through options and by paying for them.

Q. For whose benefit? A. Myself.

Q. You never had any agreement with any of these defendants that these patents should be assigned to you other than the individual defendants from whom you bought them, did you? A. No, sir.

Q. The Government alleges that before the assignment all the essential features of the agreements, meaning the license agreements and the jobber's license agreements and the price list, had been agreed upon by all the defendants; that they had agreed on all the principal conditions of the contract and upon the terms of the jobber's license agreements and upon the resale prices to jobbers and upon a price list; is that true?

A. No, sir; a great many changes were made, for instance, in the jobber's agreement as late as June 2.

Q. Was it true that at any time the defendants agreed upon those features mentioned in that allegation, or any of them? A. No, sir.

Q. If I understand you, you had gotten up those contracts yourself in the manner you have described? A. Yes, sir.

Q. And without any agreement between you and the defendants or among themselves; is that correct?

A. Yes, sir; the contracts were my own ideas. I made use of the best suggestions I could get from time to time, but the contract as a whole, in its principal parts was mine.

Q. And made without agreement among the defendants?

A. Yes, sir. 1

Q. Is that right? A. Yes, sir.

Q. Mr. Wayman, who called or who asked the various manufacturers to meet you in New York at the Hotel Astor on March 29 and 30? A. I did.

Q. What was your purpose in asking them to meet you?

A. To bring to a conclusion the licenses that I had submitted to them, copies of which I had forwarded to them previous to the meeting. I was anxious to get the matter in a concrete shape and concluded.

Q. Did you get the matter concluded at that meeting?

A. No, sir. 2

Q. There was a committee appointed, it was said here in evidence, at that meeting. Do you know who suggested the appointment of that committee? A. Yes, sir; I did.

Q. What was your purpose?

A. I was not making any headway—the discussions taking place in different parts of the room led me to believe that it would be almost impossible to conclude the matter there, and I asked that a committee be appointed to meet with me and conclude the license agreements.

Q. Did you thereafter, from time to time, confer with that committee? A. Yes, sir. 3

Q. There was a resolution adopted on those days spent at the Hotel Astor, in New York, calling for the levy of a special assessment equal to the amount of one-quarter's dues as then paid into the Association. What was that for, if you know?

Mr. GROSVENOR: I object to that question in view of the fact that the rest of the paragraph not read by counsel states the purpose.

A. It was for the purpose of the expenses of the committee that was appointed to conclude the negotiations with me.

Q. Upon direct examination Mr. Grosvenor inquired of you whether your salary was paid out of the quarterly assessments which were made by the Sanitary Enameled Ware Association. I ask you whether there was any portion of your salary paid out of this special assessment? 4

A. Oh, no. That was simply for the expenses of the committee.

Q. Your salary was paid out of the regular dues of the Association itself?

A. Yes, sir; I conducted this as a separate proposition.

1 Q. Did this matter have anything to do with the Association itself? A. No, sir.

Q. Referring, then, to the amount of a quarter's dues—

A. That was simply a method of calculation, that is all.

Q. State the circumstances under which you made up what you called the price list?

THE WITNESS: In what respect?

Q. How did you work out those prices?

A. Why, I took the printed prices of the various manufacturers that were in effect at that time and grouped the ma-
2 terials and articles into different classes in the shape of schedules and to the printed prices I added certain percentages so that with the discounts and maximum rebate allowed the prices equalled approximately 5 per cent. below the then printed prices.

Q. Did you do the work yourself?

A. A great deal of it. I employed some people to help me.

Q. Now, were those prices submitted to the manufacturers for their acceptance before you attached them as part of your contracts?

3 A. No, sir; the manufacturers did not know what the prices were until they received the price book. They had a general idea of what they would be, but they did not know the exact prices.

Q. The Government alleges, Mr. Wayman, that each defendant, meaning each licensee, stipulated as a condition of his accepting a license from you that all the other defendants should accept a license; is that true? A. No, sir.

Q. Did any of the defendants make such a stipulation?

A. No, sir.

Q. Did any one suggest such a stipulation? A. No, sir.

4 Q. They allege that it was a condition precedent to the Arrott, the Dithridge and the Lindsay patents being assigned to you that all of the defendants should accept a license from you. Is there any truth in that statement?

A. No.

Q. Was there any such condition precedent? A. No, sir.

Q. Was any such condition ever suggested by any of the defendants? A. No, sir.

Q. Upon direct examination counsel for the Govern-

ment asked you this question, appearing on pages 49 and 50 of the printed record, volume 1: 1

> "Q. The control of this vast business you claim to have acquired by the expenditure of how much money?"

Did you acquire any control of the business of the defendants?

> THE WITNESS: Do you mean as to output?
> Mr. NOBLE: Yes.

A. No, no. 2

Q. What control, if any, did you secure in the business of any of the defendants?

A. Simply the royalty accruing from each furnace in operation. I did not intend by that former answer that I attempted to control the quantities they might manufacture. They were privileged to manufacture as much or as little as they liked.

Q. What was your interest in the manufacture conducted by these defendants in sanitary enameled iron ware?

A. Well, I was interested in seeing them manufacture as many goods as they could, and as far as control is concerned, why I simply controlled the selling price at which they might have disposed of their goods. 3

Q. Under your patents?

A. Yes, sir; but as far as limiting or restricting the production, I did not do anything of the kind.

Q. Was it to your interest to restrict their operations in manufacture? A. No, sir.

Q. What was your interest?

A. I was interested in seeing them manufacture as much goods under my patents as they could, because that meant that much more royalty. 4

Q. The more goods they manufactured under your patents, if I understand you, the greater your royalty?

A. Yes, sir.

Q. And the more widely extended was the use of goods manufactured by your patents, is that correct? A. Yes, sir.

Q. The licensees could have stopped manufacturing entirely as far as you are concerned?

A. Yes, sir; I think one of them did.

1 Q. Or they could have manufactured ten times as much as they formerly had, as far as you were concerned?

A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Did you attempt to exercise any control over their output? A. No, sir.

Q. Did you attempt to exercise any control over their business of any kind or over their employees or laborers or officers, except insofar as you were interested in collecting royalties upon the furnaces they operated and seeing that the prices and quality of the goods were as you stipulated they should be in your licenses? A. No, sir.

2 Q. What do you mean by your answer, "No, sir?"

A. I mean I did not.

Mr. NOBLE: Will you read the question to him. Just elaborate your answer a little more, Mr. Wayman.

The last question was then read by the stenographer.

THE WITNESS: No, I simply attempted to enforce the license as it existed.

Q. Now, on page 133 of the printed record, volume 1, you were asked whether you drew certain checks on the bank account in Detroit at the People's State Bank, after you had secured a loan on that "electric" stock. What stock did you pledge at the bank in Detroit for the loan that you obtained?

3 A. The Standard Sanitary Manufacturing Company's stock.

Q. The "electric" stock was lodged by you with Mr. Myler as collateral, or as security for the Standard Sanitary Manufacturing Company's stock which he loaned to you, is that correct? A. Yes, sir.

Q. Now, on page 35 of the record, volume 1, Mr. Grosvenor was asking you some questions relative to Petitioner's Exhibit No. 3. He asked you this question?

4 "Isn't Exhibit 3 the earliest paper you have in the shape of a licensing agreement?

THE WITNESS: In the shape of an agreement, you mean?

Mr. GROSVENOR: Yes, in writing?

A. Yes, in writing—well, do you mean with reference to patents?

Mr. GROSVENOR: No, with reference to the licensing arrangement. 1

THE WITNESS: Yes, that is the earliest that I have retained."

I show you now Petitioner's Exhibit No. 3, which Mr. Grosvenor was then inquiring about, and I ask you if you meant to say that that was a licensing agreement?

A. No, I meant to say that that was a memorandum of agreement for the entering into of a licensing agreement. I was evidently confused as to what Mr. Grosvenor had in his mind.

Q. Again on page 71 you were asked the question, in folio 4: 2

"Q. That resolution says: 'Whereas a proposition is pending for a license agreement and a resale price for the benefit of the jobbing trade,' the license agreement referred to there, I take it, was the one about which there had been that March meeting—about March 2, I believe you said—at which you said you and Mr. Torrance were present?

"A. Yes."

I show you that Petitioner's Exhibit No. 3 and ask you if that is the paper you had in mind when you answered that question? 3

A. No, sir; this (indicating) is simply a memorandum of agreement to enter into a license agreement.

Q. Well, which one did you have in mind?

A. The one sent out before.

BY MR. HEATH:

Q. The one sent out on March 24? A. Yes.

BY MR. NOBLE:

4

Q. Meaning the proposed license agreements and proposed jobber's license agreement? A. Yes.

Q. Was that the proposition that you had, in various conferences and letters, been submitting to these various manufacturers? A. Yes, sir.

Q. Now on page 88 of the record your attention was directed to page 16 and 18 of Petitioner's Exhibit No. 41, and you were asked about the special drillings. What was your purpose in making provision for sanitary enameled

1 iron ware which might be manufactured with special drillings?

A. That is part of the fixture, or in other words it constitutes the cost of the labor entering into the fixture for that special work.

Q. And as part of the manufacture of the enameled article those drillings were made? A. Yes, sir.

Q. In other words, it constituted a special class of articles of enameled ware?

A. Yes, it constituted a sink that might have special drillings other than those regularly molded in the sink as
2 catalogued.

Q. And that added to the manufacturing cost?

A. Yes, sir.

Q. Now, in the earlier part of your testimony you spoke of talking to jobbers to try to get them to talk to those manufacturers whom you were endeavoring to get to accept licenses from you? A. Yes.

Q. Will you please explain what you meant by that?

A. Well, I talked to jobbers in Chicago and in Pittsburgh and in Niagara Falls. At the meetings up there I went up there and explained to them the different provisions of the
3 license agreements, etc., and illustrated the system of discounts, rebates, etc. Also I called attention to the fact that in the future there would not be any seconds on the market after this license agreement went into effect, and then I asked them to speak to the manufacturers as I wanted the manufacturers to feel that this was something to their interest, and I guess some of them did.

Q. And you did that for the purpose of inducing the manufacturers to take licenses from you? A. Yes, sir.

Q. On page 244 Mr. Kohler testified that in October, 1908, there was a licensing agreement spoken of at the meeting at
4 which you and various other persons were present. Do you recall what the date was when you were all in Chicago and discussed the question of a license agreement?

A. Well, I don't know of any meeting in October of that year. I remember distinctly a meeting that I mentioned was in February.

Q. And it was at that time that you made the suggestion to Mr. Day, which afterwards resulted in your visit to Trenton, &c., is that right? A. Yes, yes.

Q. Did you know of any meeting of manufacturers in Chicago in 1908? 1

A. Well, now, there may have been a meeting of manufacturers, but I do not recall being there and discussing this subject. My recollection is it was in February, because I went down to Trenton within a week or a few days after that.

Q. The Government has introduced in evidence a letter marked "Petitioner's Exhibit No. 147," appearing on page 232 of Volume 2, and written by Mr. Ahrens to Mr. Kohler, in which Mr. Ahrens asks Mr. Kohler to wire him when he could meet him in Chicago. Do you know the circumstances under which that letter was written? 2

A. I recall asking Mr. Ahrens to see Mr. Kohler, but I don't know anything about the letter.

Q. And it was pursuant to your request that Mr. Ahrens and Mr. Kohler did meet about that time? A. Oh, yes.

Q. What was your purpose in asking Mr. Ahrens to see Mr. Kohler?

A. Well, I thought he might persuade him to execute a license agreement.

Q. And you desired to have him take a license from you?

A. Yes, I had seen Mr. Kohler and Mr. Murphy a number of times and I had not been able to make any headway with 3 them.

Q. Now, Mr. Wayman, there was a gentleman named Collins from Toledo, I think he was, who went on the stand as a witness for the Government. I would like to know whether you had any agreement with Mr. Collins whereby he took a license or a jobber's license under your patents?

A. Yes, sir; he agreed with me over the telephone to conform to everything in that contract except sign it, and I considered that he had executed an agreement and I notified the manufacturers to sell him.

Q. What was the date of that agreement that you arrived 4 at with him?

A. September 15, and I sent out a bulletin to the various licensees on that date.

Q. He was in the same position as one or two other jobbers, was he not, who did not want to sign but executed by an oral agreement a jobber's license agreement with you?

A. Yes, sir.

Q. How do you fix the date of your telephone talk with him?

A. Well, I remember sending out a bulletin to the manufacturers on that day.

Q. Have you looked up your telephone calls? A. Yes, sir.

Q. And what did you find?

A. That I talked with Mr. Collins on September 15.

Q. The Government has introduced various letters in evidence, and among others, one similar to the others produced by Mr. Grosswiller, appearing on page 425 of the testimony and being Petitioner's Exhibit No. 234, of which Mr. Grosvenor read the words: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled iron ware." Do you know anything about how those letters came to be sent to the jobbers?

A. I composed the letter and sent a copy of it to each of the manufacturers and asked them to send it to the jobbers when sending out the license agreements to be executed.

Q. Did you prepare the words of that letter without any consultation with any of the manufacturers, that is the words quoted there?

A. Yes, in this respect I think one or two of the manufacturers asked me if there was any letter to go out with these contracts, so I composed that letter.

Q. A letter containing the words quoted and similar to Petitioner's Exhibit No. 47? A. Yes.

Q. So that those letters were sent out by the manufacturers at your request? A. Yes, sir.

BY MR. HEATH:

Q. And the language referred to was yours? A. Yes, sir.

BY MR. NOBLE:

Q. Mr. Kelly, in his testimony on pages 223 and 224 testified that you suggested a license agreement to him in the fall of 1909. Were you trying to buy from him what is known as the Nesbit patent? A. Yes, sir.

Q. Do you recall when it was that you had those negotiations with him?

A. Well, I think it was beginning with October and along through December—the latter part of December—from time to time that I saw him.

Q. He lived in Pittsburgh, did he not? A. Yes, sir.

Q. And you saw him frequently? A. Yes, sir

Q. You met him from time to time at lunch and places of that sort? A. Yes, sir. 1

By Mr. Heath:

Q. You ate lunch at the same restaurants?

A. Yes, we would meet together frequently.

By Mr. Noble:

Q. On page 234 of the record, volume 1, Mr. Kelly said that you mentioned something to him about being able to get hold of the Arrott patent and that Wolff would throw in a lot of patents? 2

A. Well, I don't know about Wolff throwing in a lot of patents, but I tried to buy an enameling table patent from him at a later date.

Q. From whom?

A. The L. Wolff Manufacturing Company, after I had made arrangements for and did purchase the Lindsay patent.

Q. Is that what you told Mr. Kelly, as nearly as you can remember? A. Yes, sir.

Q. Did you say anything about Wolff throwing in a lot of patents? A. I don't recall saying that, no.

Examination Suspended. 3

At this point the taking of evidence on behalf of the defendants was adjourned until the following morning at 11 o'clock.

4

1 IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

vs.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

2 New York, Post Office Building,

April 22, 1911.

Pursuant to adjournment the taking of evidence on behalf of the Defendants was resumed at eleven o'clock at the same place.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
3 on behalf of the Standard Sanitary Manufacturing Company and others.

EDWIN L. WAYMAN, a witness of competent age, heretofore produced and sworn, resumed the stand, and testified as follows:

EXAMINATION BY MR. NOBLE (continued):

Q. I notice in going over my notes that I failed to ask you if you granted a license under the Arrott patent to the Day-Ward Company? A. Yes, sir.

Q. And to the Standard Sanitary Manufacturing Com-
4 pany? A. Yes.

Q. And to the Humphryes Manufacturing Company? A. Yes.

Q. And to the United States Sanitary Manufacturing Company? A. Yes.

Q. That license also included the Dithridge and the Lindsay patents, did it not? A. Yes, sir.

Q. Are the jobber's license agreements which you issued in May or June, 1910, now in force? A. No, sir

Q. Are there any restrictions imposed upon the manufacturers as to prices, terms or conditions at this time? 1

A. No, sir.

Q. When did you remove those restrictions that are contained in the license agreement and the jobber's license agreement?

Mr. GROSVENOR: I object to that. It is too indefinite.

A. Well, the latter part of December, 1910.

Q. Just tell me what you did, also tell me what restrictions you removed? 2

A. Everything relative to prices. The balance of the license agreement between the manufacturers and myself is still in effect.

Q. Is there any restriction upon the manufacturers or have there been since the first of January, 1911, to sell only to jobbers who have signed a contract? A. No, sir.

Q. So that provision, which had previously existed is also removed? A. Yes, sir.

Q. Is there any restriction in existence upon jobbers to deal only in licensed ware? A. No, sir.

Q. Is there any restriction upon the manufacturers to sell only first class or A quality goods? A. Yes, sir. 3

Q. At this time? A. Yes, sir.

Q. So that the restrictions of the contract relating to prices, relating to terms of sales, relating to discounts, rebates to jobbers and limiting the sale to licensed jobbers, have been removed. A. Yes, sir.

Q. And have been removed since the first of the year?

A. Yes, sir.

Q. Since the first of the year there has been free and unlimited competition among the manufacturers?

A. Yes, in my estimation, there has always been free and unlimited competition. 4

Q. And there has been since the first of the year?

A. Yes, sir.

Q. And the same is true of all the jobbers?

A. Yes, sir; so far as I know.

Q. I mean any restrictions that you may have imposed?

A. Yes, sir.

Q. I asked you yesterday, or the day before, whether any of the manufacturers or of the licensees, to whom you

granted licenses, were interested or had any interest in any money that you had made or might make out of the granting of the licenses which you did heretofore grant. I now ask you whether they are interested in the rebates which are in your hands and which you may forfeit for a violation of the contract between yourself and any licensee?

A. No, sir; those belong to me, if imposed.

Q. That is to say, if you forfeit any of the gross royalties that belongs to you? A. Yes, sir.

Q. Now, Mr. Wayman, what expenditures did you go to and have you gone to in the granting of these licenses to the several manufacturers in maintaining them and in enforcing your rights under your patents?

A. Somewhere between twenty-five and thirty thousand dollars in expenses in operating the license agreements.

Q. That is exclusive of the purchase price which you paid for these patents? A. Yes, sir.

Q. That does not include, of course, any expenses that you would have been put to for auditing the books which I understood you to say you did not audit, because at the end of the year these restrictions were removed?

A. No, that does not include that because at the end of the year I never completed my organization.

Q. Did any of the licensees contribute anything toward those expenses that you have mentioned other than, of course, the royalties you have collected from them?

A. No, sir.

Q. On page 45, Volume 1 of the Record, I call your attention to this question:

> "How did that provision respecting the appoint-
> "ment of a Commission come into the contract, if it
> "was not the result of that resolution of March 30?"
> And your answer: "At the meeting I held with the
> "Committee at Mt. Clemens, one of the Committee
> "wanted me to transfer my options on patents to a
> "holding company, and I objected to that very
> "strongly and suggested that I would employ an ad-
> "visory Committee. I took the matter up with my
> "counsel with reference to this paragraph, and it was
> "composed by us as it appears in the license agree-
> "ment." And on the next page, 46, "Q. As I have
> "previously pointed out to you, the form of contract

"which you sent around on March 24, did not con- 1
"template an appointment of the Commission?
"A. No.
"Q. Who first suggested it?
"A. I think Mr. Hoelscher of the L. Wolff Manu-
"facturing Company."

Now, who first suggested that you would employ an Advisory Committee? A. I did.

Q. And you made that suggestion in response to the suggestion of someone at Mt. Clemens who wanted you to transfer your options on the patents to a holding company; is that correct? A. Yes, sir. 2

Q. Who wanted you to transfer your options to the holding company? A. Mr. Hoelscher.

Q. Going again to that question on page 46:

"Q. Who first suggested it?
"A. I think Mr. Hoelscher of the L. Wolff Manu
"facturing Company," to what did that apply?

A. That applied to the holding company.

Q. What suggestion did Mr. Hoelscher make?

A. That I transfer my options on the patents to a hold- 3
ing company.

Q. Did you mean that he suggested the appointment of an advisory committee or of a Commission?

A. No, that was my suggestion.

Q. So that your answer on page 46 is misleading, as it reads?

A. I thought that was corrected last fall, because I spoke to Mr. Heath about it at the time, and he and Mr. Grosvenor were going over the testimony and would correct such incorrect statements as were apparent at that time, and I thought that had been done.

Q. Now, I call your attention to pages 88 and 162 of 4
the Record, Volume 1, relative to some questions as to carload lots. I will read this to you:

"Q. Let me understand: Is it not right that the
"jobber buys from the manufacturer at carload prices
"always? A. No.
"Q. Under these contracts? A. No.
"Q. Is he not allowed carload prices to jobbing
"points? A. No, not unless he buys in carloads."

1 And then on page 162:

"Q. That means the jobbers buy at carload prices "and sell at less than carload prices?

"A. Yes, if their sales are less than carloads.

"Q. But, they buy at carload prices?

"A. If they buy in carloads they do, and if not "then at less than carload prices.

"Q. From all the manufacturers?

"A. With the exception of manufacturing points."

Will you please make clear what you meant by your
2 answers to those questions?

A. Well, at the manufacturing points the jobber was given the benefit of carload prices in any quantity. At non-manufacturing points he must pay the less than carload prices if he purchased in less than carload lots.

Q. In other words, if a jobber buys at a manufacturing point he can buy at carload prices although he may buy less than a carload in quantity. Is that right?

A. That is correct, yes.

Q. At non-manufacturing points, in order to get carload prices he must buy a carload or more, is that correct?

3 A. That is correct.

Q. If he buys less than carloads, he pays more than carload prices at non-manufacturing points; is that correct?

A. Yes, sir. Now, in my testimony I stated that in Exhibit No. 133, Page 4, of the white sheet, I stated that the line reading, "Goods must be sold to the plumbers at the quantity prices established in the sheet," was inserted for the reason that the jobber might think that inasmuch as he was buying in any quantity at carload prices he might sell to the plumber at carload prices, and that prevented it.

Q. Now, on Page 116 of the Record, Volume 1, Mr. Gros-
4 venor called your attention to Exhibit No. 3 for Identification which was offered by the Government. He called your attention to these words: "The following resolutions were unanimously adopted, subject to approval of the members at the general meeting to be held on December 1st." The words are in the minutes of the Executive Committee, are they not? A. Yes.

Q. Now, the resolution, as copied in the Record is as follows:

"Resolved: That the manufacturers shall not accept

"any orders for sanitary enameled ware for delivery "beyond March 31st, 1910; that any future delivery "order shall not be accepted without definite specifica- "tion and shipping dates, and subject to the proviso "that the manufacturer shall have the option of ship- "ping any unfilled portions of such future delivery "orders any time during the month of March, 1910." What was the occasion of the passage of that resolution?

A. Why, as I recall it, at that meeting there was a resolution passed removing the guarantee up to installation on non-guaranteed tubs. In other words, the grade of tubs known as the "Nemo" and "Premo" and "Monroe" had been previously guaranteed up to installation, and a resolution was passed to the effect that they would not be guaranteed after the time they left the manufacturers warehouse, and that the jobber should not assume any responsibility in selling them to the plumber. Now, it developed that a lot of the companies took future delivery orders extending over various periods and it was thought advisable to fix a day, or in other words name certain periods in the year so that when any resolution of a similar nature might be offered they would all be on the same basis without a lot of future delivery orders on hand. That is the meaning of that resolution as to March 31st and had nothing to do with this license proposition whatever.

Q. Now, I ask you if that resolution had anything to do with the plan which you were working on to obtain options on the Arrott and these other patents and thereafter grant licenses to any other manufacturers who would take them from you?

A. No, absolutely nothing. May I look at those minutes?

Mr. NOBLE: Yes.

A. (Continuing): I would like to read these two resolutions into the record in explanation of what I have just said. The matter was considered in the Executive Committee and more fully gone into at the next meeting on December 1st.

Q. The resolution about which I just questioned you, which appears in the minutes of the executive meeting of November 30, 1909, dealt with a subject matter which was also considered at a meeting of the Sanitary Enameled Iron Ware Association on the next day? A. Yes, sir.

Q. Now, I call your attention to bulletin No. 14, which appears at Page 60 of the book known as "Petitioner's Exhibit No. 3 for Identification," and I ask you to look at that bulletin, and I ask you what that is?

A. That is a resolution adopted at the general meeting of December 1st, which I just quoted.

Q. What is the sheet of paper which I show you?

A. That is a bulletin issued to the members of the Sanitary Enameled Ware Association.

Q. By whom? A. By myself.

Q. And was this the method that you took of informing the members of the action of the Executive Committee on November 30, and of the Organization itself on December 1st, 1909? A. Yes, sir.

Mr. NOBLE: I will read this bulletin on the Record. The bulletin reads:

"Section 3, Page 14, dated December 1st, 1909, subject, future delivery orders, Bulletin No. 14.

"Resolution adopted at general meeting December 1st, 1909.

"Resolved: That the manufacturers shall not accept any orders for sanitary enameled iron ware for future delivery beyond March 31, 1910; that any future delivery order shall not be accepted without definite specifications and shipping dates and subject to the proviso that the manufacturer shall have the option of shipping any unfilled portion of such future delivery orders any time during the month of March, 1910."

The resolution I read to you is what was sent out in the Bulletin, No. 14, to which you have just been testifying?

THE WITNESS: Yes, sir.

Q. Now, the resolutions which I have read to you and the memorandum of the discussion and the bulletin constitute, do they or not, the entire transaction to which you have referred? A. Yes, sir.

Q. There has been some mention made in the testimony of some action taken by you or by some of the manufacturers of sanitary enameled iron ware not to take any future delivery orders or orders for future delivery beyond the 31st day of May, 1910. To what did that action have reference?

Mr. GROSVENOR: I object to that question as being an inaccurate statement of the evidence. The testimony referred to by counsel evidently being the resolution adopted at the March 30 meeting referring to unfilled orders and being Petitioner's Exhibit No. 4. 1

Mr. NOBLE: I call your attention, in view of the statement of counsel for the Government, to the exhibit to which he refers, which reads:

"Whereas a proposition is pending for a license "agreement and a resale price for the benefit of the "jobbing trade, and whereas long-time contracts are a "menace to such a proposition, we, the undersigned, "Mfr. of En. Ware hereby agree to take no orders for "delivery beyond May 31, 1910. This agreement is "not binding upon the signers unless all the members "of the En. Ware Mnfgrs. are parties thereto and "append their signatures." 2

Now, I go back to my question and ask you again to what that action of which I have inquired referred?

A. The general subject of this manufacturer's license agreement and jobber's license agreement.

Q. What did the action of not taking orders for delivery beyond May 31, refer to? What was the occasion of it? 3

A. Well, the idea was that with these licenses going into effect, as near as I could estimate about June 1, that it would not be advisable to have a lot of unfilled orders on hand on that date.

Q. Then, this action related to the proposal which you made to the various manufacturers to grant them licenses?

A. Yes, sir.

Q. And you expected to be able to put those licenses into effect immediately after the 31st day of May, 1910?

A. Yes, sir.

Q. Is that correct? A. Yes, sir. 4

Q. Did that action have any reference of any kind to the resolutions of the Sanitary Enameled Ware Association to which your attention has been called in the minutes of that Association, of November 30 and December 1st? A. No, sir.

Q. The action fixing May 31 as a date beyond which future delivery orders would not be taken was or not the action of the Sanitary Enameled Ware Association?

A. No, sir; that was not a meeting of the Association?

1 Q. What was that occasion?

A. That was a meeting of the manufacturers for the purpose of—

Q. Who had called that meeting?

A. I had for the purpose of considering the license agreement that I had prososed to them, and copies of which I had sent to them previous to the meeting.

Q. I now call your attention to Page 167 of the Record, Volume 1, to a letter on your letterhead, being Petitioner's Exhibit No. 102, and dated May 29, 1910, headed "Salesmen's meeting." I call your attention to and ask you to read
2 through that letter so that I can ask you some questions about it.

The witness then did as requested.

Q. What was the meeting that you there referred to?

A. Why, I thought that I would get all the salesmen together, including the manufacturers—

Q. Salesmen of whom, of your licensees?

A. Yes, and the manufacturers themselves, and explain to them all the meanings and operations of the various paragraphs in the jobber's license agreement. The jobbers heard
3 this was going into effect and there were a lot of questions being asked the different companies that the manufacturers did not know about themselves, and I thought I would get them together and go over the whole thing with them so that when the salesmen called on the jobbers with reference to executing the contract they would have a thorough idea of what all the provisions meant?

Q. Was that idea proposed by you? A. Yes.

Q. So that you could fully instruct the salesmen and such manufacturers as did not understand your bulletin and your literature, upon what your license agreement provisions
4 meant?

A. I remember I was talking to Mr. Carl Falk, of the Kerner Company, and he said that there was a lot of misunderstanding among the salesmen of the provisions of the license agreement and what it might be, and he gave me the idea of calling these people together and explaining what was meant.

Q. You say here, "I would therefore like to have the individuals know the story from A to Z and be prepared to retell it to their jobbers with a complete knowledge of the situa-

tion and in a convincing manner." Does that correctly describe your purpose in trying to arrange for this meeting? 1

A. Oh, yes.

Q. Did you bring about this meeting? A. Oh, yes.

Q. Did you explain to the various salesmen and jobbers and manufacturers what you meant?

A. Not to the jobbers, but to the manufacturers and their salesmen.

Q. These were the salesmen of the manufacturers?

A. Yes, sir; there were about forty or fifty of them present.

Q. Now, I call your attention to Petitioner's Exhibit No. 101, which appears on page 166 of the Record, it being dated May 11, in which you say: "Will you kindly advise me by return mail how many copies of the resale price book you will require for your salesmen and office use." Is that a letter applying to your licensees? A. Yes, sir. 2

Q. (Reading): "I will send from this office the necessary copies to the jobbers so that in naming your quantity you need not take into consideration your customers' requirements. Yours very truly." Did you send the copies there referred to to the jobbers in sanitary enameled iron ware?

A. Yes. 3

Q. Direct? A. Yes.

Q. I call your attention to the note appearing on the jobber's license agreement being Petitioner's Exhibit No. 11, and reading "Note: This contract must be executed by the purchaser in order to purchase sanitary enameled iron ware," and ask you why you put that there and for what purpose?

A. Well, the jobbers as a whole were very much in favor of the jobber's license agreement.

Q. Had you talked to a great many of them?

A. Yes, I thought there might be some delay in having the licenses signed, and in order to get the prices arranged 4 uniformly and the license fixed up, that is why I put that in there.

Q. I call your attention now to pages 183 and 184 of the Record, Volume 1, and to the following questions, where you are referring to a paper which you say was drawn up three years ago in rough form; this is the question:

"Q. That was the time you were with the—

"A. (Interrupting): Seamless Steel Bathtub Company.

1 "Q. Did they make porcelain enameled iron ware?

"A. They made porcelain enameled steel bathtubs, which were similar to enameled cast iron bathtubs.

"Q. Are there any more firms manufacturing that kind?

"A. No, except a German concern, I think.

"Q. It is not able to compete with sanitary enameled iron ware, is it?

"A. I believe it is.

"Q. It cannot be run on a paying basis, can it?

"A. No—"

2 Then you were interrupted; what were you going to say there?

A. I was going to point out that we had not gotten to a strictly paying basis, that is our output was not large enough to be profitable.

Q. What do you mean by "our?"

A. The Seamless Steel Bathtub Company. At the rate we were running, our costs were higher than our selling price. We were getting fourteen to fifteen dollars a tub, on the basis of an output on which we had a capacity that could have competed on a profitable basis with the cast iron
3 enameled tub.

Q. That is the answer you were going to make?

A. Yes, sir; along those lines.

Q. I now call your attention to page 189 of the Record, Volume 1:

"Q. I will read on (reading): 'when notified in writing by the Licensor upon two-thirds vote of all the companies operating under a similar license or upon the recommendation of an Executive Committee appointed by the various Companies for this purpose.' You remember that provision?

4 "A. Yes."

At that time Government's counsel was reading from Petitioner's Exhibit No. 109, which appears on page 161 of Volume 2 of the Record, from that portion appearing page 163, folio 1. He then asked you:

"Q. That provision contemplates, does it not, the appointment of an Executive Committee?

"A. Yes.

"Q. You finally, by your arrangement of May 6, 1910, had appointed a Commission? 1

"A. As representing the other manufacturers.

"Q. That Commission, you have testified, was elected by vote of the manufacturers after they entered into the licensing arrangement on May 6?

"A. Yes."

Now, I ask you what you meant by that Committee there referred to?

A. Why, at the time I drew this up, that is Petitioner's Exhibit No. 109, I was considering a Committee, but I cut that out in the proposed license agreement that I furnished to the manufacturers just previous to the meeting in New York City on the 29th and 30th. 2

Q. Were the recommendations of that Executive Committee, as you were then considering them, binding upon you as you planned it in Exhibit No. 109? A. No, no.

Q. Did the Committee which you were there considering have anything at all to do with the Commission which was later elected after you had granted the licenses to the various licensees?

A. No, I thought I would get rid of the Committee altogether. But, when at Mt. Clemens this holding question came up, then I suggested an Advisory Committee. 3

Q. The Executive Committee which is mentioned in Exhibit No. 109 was dropped entirely by you when you began to put your license agreements, as you subsequently granted them, into form, is that correct? A. Yes, sir.

Q. And has it any reference to the Commission or Committee which you afterwards did accept and provide for in the license agreements similar to Petitioner's Exhibit No. 9.

A. No, it simply illustrates what I had in mind when I drew up this paper known as Petitioner's Exhibit No. 109 at that particular time. 4

Q. The Commission which you afterward provided for in the licenses which you granted, you say, was first thought of and first suggested by you in view of the suggestion that you turn over the patents which you had acquired to a holding company; is that correct?

A. Yes, sir; that is the options on the patents which I had at that time.

1 Q. And these two thoughts have nothing to do with each other? A. No.

Q. In that same exhibit there is a provision appearing in the Record, Volume 1, pp. 190, 191 (reading):

> "Penalties shall be deducted from all unpaid re-"bates at the rate of $1,000 for each violation and 75 "per cent. of all penalties retained by the Licensor will "be divided among the licensees in good standing dur-"ing the month in proportion to the amount each com-"pany's royalty bears to the amount to be divided."

2 Was that idea dropped by you? A. Yes, sir.

Q. Did you carry it any further than you had at that time, after you drew up Exhibit No. 109?

A. No, when the final license agreements were entered into it was thoroughly understood that any unpaid rebates were my own for violation of the contract.

Q. And that provision is contained in the contract of license? A. Yes, sir.

Q. And you in addition to that told the various licensees? A. Yes, sir.

Q. And they have no interest and never have had any
3 interest in those penalties? A. Absolutely none.

Q. Nor in the royalties which you received? A. No, sir.

Q. Mr. Wayman, it has been testified that Mr. Jackson, at your request explained the legal features of these license agreements at a meeting which you called in New York at the Hotel Astor on the 29th and 30th of March. Who asked Mr. Jackson to go there? A. I did.

Q. Who paid his fees? A. I did.

Q. Did anybody contribute toward your paying those fees? A. No, sir.

Q. You had previously conferred with Mr. Jackson about
4 this matter? A. Yes, sir; in March.

Q. Did the fee which you paid him cover your previous conferences? A. Yes.

Q. On Page 143 of the Record, Volume 1, there are Petitioner's Exhibit No. 74 and on Page 144 Petitioner's Exhibit No. 75, they being some telegrams relative to meeting Mr. Caldwell of the Cahill Iron Works, and Mr. Ahrens seeing him in Louisville; how did that happen to come about?

A. Mr. Ahrens was in Chicago at the time and I understood that Mr. Caldwell would be there. I called Mr. Ahrens

over the 'phone and he said that Mr. Caldwell had left, and I asked him to see him about the Crane Company. I understood that he afterward saw him in Louisville. 1

Q. And he did so at your request? A. Yes, sir.

Mr. NOBLE: I have not had the opportunity of examining the minutes covering Mr. Wayman's testimony, as they are not all written out. The ones which are written out cover only a small portion of what he has testified to. It may be that when I read them through there will be some few questions which I will want to correct, if the Record is not quite clear, and they may suggest a few other questions. I also have a few other questions which I will want to ask Mr. Wayman, but I would like to take a recess at this time. 2

Mr. GROSVENOR: Until two o'clock?

Mr. NOBLE: Yes.

At this point a recess was taken until two o'clock.

After Recess.

EDWIN L. WAYMAN, a witness heretofore produced and sworn, resumed the stand and testified as follows: 3

EXAMINATION BY Mr. NOBLE (continued):

Q. Mr. Wayman, the Government alleges that during the latter part of 1909 and during the early part of 1910, you and the other defendants knowingly entered into a combination and conspiracy to restrain the trade in sanitary enameled iron ware. I desire to know and inquire from you whether you ever entered into any agreement or understanding with these other defendants, or any of them, singly, separately or collectively or any groups of them, to restrain, hamper, or impede the trade or block the trade or to lessen competition in sanitary enameled iron ware? A. No, sir. 4

Q. Did you ever have any agreement or understanding to do any of the things which I have mentioned with anybody?

A. No, sir.

Q. The Government alleges that the defendants made an agreement or had an understanding or entered into a combination or conspiracy to eliminate and suppress competition between each other; is that true?

A. No, sir; the license agreements invite competition.

Q. Did you ever enter into any agreement with any of these defendants or with any of them collectively or any groups to eliminate or suppress competition? A. No, sir.

Q. Or do anything to eliminate or suppress competition in sanitary enameled iron ware? A. No, sir.

Q. Did you ever enter into any agreement with any of the other defendants or any groups of any of the other defendants to fix the price at which sanitary enameled iron ware should be sold?

A. No, sir; except as expressed in the license agreements.

Q. And those were made with each defendant separately, weren't they? A. Yes, sir.

Q. Did you grant these defendants licenses separately under your patents? A. Yes, sir.

Q. Now, aside from the terms of these license agreements and jobber's license agreements, did you fix any terms upon which sanitary enameled iron ware should be sold?

A. No, sir.

Q. Did you fix any terms with any of the defendants jointly or in groups or with any of them together, or were they separately?

A. They were made separately with each licensed manufacturer.

Q. Other than the prices, terms and conditions which are fixed by your licenses to these defendants and in the jobber's license and the price sheets and the differentials therein contained and the discounts and rebates that were allowed upon purchases, did you have any agreement or understanding of any kind, or sort or description with these defendants?

A. No, sir.

Q. The Government alleges that the defendants determined upon and are observing uniform methods of selling their product of sanitary enameled iron ware to jobbers under written contracts whereby each jobber must sell at fixed prices. I ask you did you ever make any agreement with any of these defendants as to the methods at which they were to sell to jobbers except as expressed in your license agreements, jobber's license agreements and the price sheets?

A. No, sir.

Q. Did you make these agreements to which I have just referred in the manner I have described them with the defendants or with each of your licensees singly? A. Yes, sir.

Q. How? A. Singly.

Q. Was there any agreement between the licensees themselves and you? A. No, sir. 1

Q. Was there any agreement between the licensees on the one hand and you on the other, except as expressd by you in the license agreement? A. No.

Q. What was your relationship to these defendants?

A. I was the licensor of each individual licensee.

Q. Did you ever have any other relationship with them in connection with this matter? A. No, sir.

Q. The Government alleges that there is a combination among these defendants by which no licensee will sell a jobber who has not signed a contract and agreed to sell at the resale price. Is there any such combination or understanding between them? A. No, sir. 2

Q. Was there ever any understanding or combination or contract or agreement between you on the one hand and the licensees, defendants here, on the other, in respect to that matter? A. No, sir.

Q. Now, the Government says in its Petition that no defendant, that is no licensee, will sell to any jobber sanitary enameled iron ware unless he is a party to this combination. Now, is there any combination? A. No, sir.

Q. Was there ever any combination? A. No, sir. 3

Q. The Government in its Petition alleges that no defendant will sell any of its product of sanitary enameled iron ware to any person or company who is not recognized by all the defendants as a jobber, or as a "legitimate jobber"; is that so?

A. No; they were privileged to sell to any persons they saw fit.

Q. Was there any agreement among these defendants and you as to who was a jobber or a "legitimate jobber?"

A. No, sir.

Q. The Government alleges in its petition that the prices upon sanitary enameled iron ware have been and are now fixed by the defendants by mutual agreement; is that true? A. No, sir. 4

Q. What is the truth about the prices?

A. I fixed them personally.

Q. Was there ever any agreement among these defendants that the prices should be fixed without competition among themselves? A. No, sir.

Q. Were the reports which you received from these

manufacturers as to their monthly output, or rather as to the number of furnaces in operation or the reports which you received, whatever they were, turned over to any of the other manufacturers? A. No, sir.

Q. Have these reports which you have received from the various licensees from time to time ever been examined by any other manufacturers? A. No, sir.

Q. Has any other manufacturer ever asked to see them? A. No, sir.

Q. Have you ever communicated their contents to any other manufacturer? A. No, sir.

Q. Mr. Wayman, you have filed an answer in this suit, have you not? A. Yes, sir.

Q. Was it verified? A. Yes, sir.

Q. When did you verify it?

A. On or about the twentieth day of September, 1910.

Q. Was that answer thereafter filed by your direction as your defense? A. Yes, sir.

Q. Was what you said in it true? A. Yes, sir.

Q. Is it true now? A. Yes, sir.

Mr. NOBLE: There may be some further questions which I will have to ask this witness upon reading the record of his testimony.

Mr. GROSVENOR: Counsel for the Government suggests that after the testimony of Mr. Wayman has been written up by the stenographer, and also the testimony of the other witnesses at Pittsburgh, which has not yet been written, and after the conclusion of the Government's rebuttal, which will be on Monday, April 24, that we have a meeting either at the end of next week or the week after, at which time such corrections as will be necessary in the Record may be made by counsel, and also such additional questions as counsel for defendants desires to address to the witness Wayman may be asked of him.

EXAMINATION BY MR. GROSVENOR:

Q. Mr. Wayman, I show you certain typewritten letters as follows, which I ask you to read over to refresh your recollection. They are letters dated August 25, 1909, signed by you as Commissioner, and addressed to Mr. J. A. Kelly, care of the Iron City Sanitary Manufacturing Company,

POOR COPY

Pittsburgh, Pennsylvania; and a letter dated December 18, 1909, appearing in Petitioner's Exhibit for Identification No. 3, and addressed "Dear Sir," with a blank space for signature and with the word "Commissioner"; and a letter dated January 18, 1910, appearing in the same Exhibit No. 3, with a blank space for the signature and below the typewritten word "Commissioner"; and a letter January 22, 1910, headed "Market Conditions," with a blank space for signature and then the word "Commissioner," this letter also appearing in Petitioner's Exhibit No. 3 for Identification; and a letter dated March 15, 1910, addressed to Mr. J. A. Kelly, Iron City Sanitary Manufacturing Company, Pittsburgh, Pennsylvania, signed "E. L. Wayman, Commissioner"; and a letter dated April 27, 1910, addressed to Mr. J. A. Kelly, and signed "E. L. Wayman." Were those letters all written by you? 1 2

A. This letter of December 18, was undoubtedly sent out by me, but I do not recall the circumstances. I recognize all the other letters.

Q. Were all these letters written by you? A. Yes, sir.

Mr. GROSVENOR: Now I offer these letters in evidence as Petitioner's Exhibits numbered as follows: The letter of August 25, 1909, as Petitioner's Exhibit No. 287; letter dated December 18, 1909, as Petitioner's Exhibit No. 288; letter dated January 18, 1910, as Petitioner's Exhibit No. 289; letter dated January 22, 1910, as Petitioner's Exhibit No. 290; letter dated March 15, 1910, as Petitioner's Exhibit No. 291; letter dated April 27, 1910, as Petitioner's Exhibit No. 292. 3

Letters referred to were then marked and filed as "Petitioner's Exhibits Nos. 287, 288, 289, 290, 291 and 292" respectively. 4

By Mr. GROSVENOR:

Q. This letter of August 25, 1909, which is taken out of the Exhibit No. 3 for Identification offered by the Petitioner, and which is now marked as "Petitioner's Exhibit No, 287," was written by you while you were Commissioner?

Mr. NOBLE: I object to the admission of the letter in evidence and I object to the question on the

ground that it is incompetent, immaterial and irrelevant; that it has nothing to do with any of the issues involved in this case and is not binding upon any of the defendants in this case.

Mr. GROSVENOR: Will you read the question?

The stenographer then read the last question.

A. Yes, sir.

Mr. GROSVENOR: This letter, which is Petitioner's Exhibit No. 287, reads as follows:

"August 25th, 1909.

"Dear Sir:—

"Will you kindly advise me by return mail what "especially low prices by competitors have been en- "countered by your Company; in the sale of its 'small "ware' product, that show an unreasonable and un- "necessary difference between what might and should "be obtained.

"This does not refer to ordinary cuts that are some "times made to influence sales, such as 2½ and 5 per "cent., but differences in some instances that I under- "stand are 20 per cent. below the accepted market.

"Some of the factories seem to be taking business "at much lower prices than necessary and that in the "face of a rising market with a fair volume of busi- "ness appear unwarranted.

"Will you kindly send me such detailed information "as you may have regarding matters along these lines "that are particularly embarrassing?

"Yours very truly,

W/D "Commissioner."

By Mr. GROSVENOR:

Q. Was this mailed by you to the various members of the Association of which you were Commissioner.

Mr. NOBLE: I object to that question. The witness naturally does not know whether it was mailed or not.

A. As I recall, it was sent to only a few of the companies.

Q. It was sent to some of the companies? A. Yes.

Q. Now, this letter of December 18, 1909, which is Petitioner's Exhibit No. 288, being a typewritten sheet signed by you and addressed to Mr. J. A. Kelly, was that letter sent out by you while you were Commissioner? 1

Mr. NOBLE: I object to the offer and admission of the letter and to the question on the same grounds as stated to the last exhibit.

A. Yes.

Q. I point out to you the address of Mr. Kelly which is in original typewriting, whereas the rest appears to be a carbon copy, and I ask you if that refreshes your recollection as to whether or not you sent that letter to others besides Mr. Kelly? 2

Mr. NOBLE: I object to the question on the ground that the witness cannot possibly say whether the letter was mailed.

A. I am under the impression that that is a letter which I addressed to the various companies.

Mr. GROSVENOR: This letter reads as follows:

"Dec. 18th, 1909. 3

"Mr. J. A. Kelly,
"c/o Iron City Sanitary Mfg. Co.,
"Pittsburg, Pa.

"SPECIAL MEETING.

"Dear Sir:—

"Certain market conditions have remained un-
"changed since the last meeting and it is deemed ad-
"visable to call a Special Meeting for Wednesday, Dec.
"22nd, at this office at 10:30 A. M. in order that closer 4
"working arrangements than have existed in the past
"may be discussed.

"It is apparent, that notwithstanding the statements
"made at the last meeting and the discusssion that
"took place regarding market prices, that there is
"still a wide variation on many articles.

"It is highly important that you attend this meet-
"ing and assist in some action that will tend to main-

1 "tain the market in a better manner than now obtains.
"Will you please advise if you will be present?

"Yours very truly,

"E. L. Wayman,
"Commissioner."

Q. I show you Petitioner's Exhibit No. 289, being a letter January 18, 1910, and taken from Exhibit No. 3 for Identification, offered by the Petitioner, and ask you if you sent that to the various manufacturers who were members of the Association?

2 Mr. NOBLE: I make the same objection and the further objection that the witness cannot possibly state whether it was sent to the various manufacturers. The letter bears no post mark; it is not addressed to anybody and it is in no way binding upon any of the defendants in this suit.

A. I am under the impression that I sent that out.

Q. This is your office copy, is it not?

A. I presume so; I don't know positively whether it is or not.

Q. Well, it is taken from the book in which you kept the 3 office copies of your correspondence with the several manufacturers?

A. If it was in that book, it is undoubtedly my office copy.

Mr. NOBLE: I object on the ground that the book has not been in his possession for the last eight or ten months.

Q. Well, is that the style of paper that you had in your office?

A. Yes, that is with the three holes punched in the left hand side; whether that is the particular paper, I do not 4 know.

Q. Do you recall writing to the manufacturers about that time? A. Yes.

Q. That is, a letter of this purport? A. Yes, sir.

Mr. GROSVENOR: This letter reads as follows:

"Jan. 18th, 1910.

"Some of the Manufacturers report that business is "exceptionally dull and inquire if market prices are "being maintained.

"I believe this situation is true generally due to the 1
"bad weather existing and the taking of inventories by
"the Jobbers. If your Company is experiencing a slack
"condition at this time, I trust you will not try to
"stimulate the volume of your business by any weaken-
"ing in prices but await the natural order of things
"which will undoubtedly bring you your share of the
"business at fair prices.

"Yours very truly,

"Commissioner."

Q. I now show you Petitioner's Exhibit No. 290, it being 2
a letter dated January 22nd, 1910, and consisting of two sheets headed "Market Conditions," and taken from Petitioner's Exhibit No. 3 for Identification, and I ask you if that is a letter which was addressed by you to the various members of the Sanitary Enameled Ware Association of which you were the Commissioner?

Mr. NOBLE: I object to the letter on the same grounds as previously stated. The letter cannot be binding upon any of these defendants in this action.

A. Well, of course, I cannot recall the various replies 3
and from whom they may have been received in answer to this communication which is evidently an answer to the letter of January 18.

Q. Is not that a letter written by you subsequent to the letter of January 18, and purporting to give certain replies received by you in response to the letter of January 18?

A. Yes, sir.

Q. Then, this letter is a copy of the letter sent out by you on this date to the various members of the Association?

A. I would judge that to be so, yes.

4

Mr. GROSVENOR: Petitioner's Exhibit No. 290 reads as follows:

"Jan. 22nd, 1910.

"Market Conditions.

"I am pleased to give you the following extracts from letters received from various parts of the country, in reply to my C. L. letter of Jan. 18th with reference to market conditions. The replies received

indicate a dull market due principally to natural conditions and an optimistic feeling for the future.

"'We are no doubt passing through the dullest period of the year so far as enameled ware is concerned but we believe we are going to have a good demand a little later. We are maintaining the same prices, we have been making since the forepart of December and expect to continue to do so. We have in no instance deviated from these prices and we think it would be a mistake for any manufacturer to cut prices with a hope of getting business as that would have a tendency to aggravate the present situation still further and in the end would result in a loss.'

"'We see no reason why any manufacturer should cut prices at this time, as the market will no doubt right itself in the near future, when everybody will have all the trade they can handle in this line. It seems to us in view of the good business apparently ahead of us that we ought to obtain better prices for bath tubs and small ware.'

"'Our order sheets for the present year and for the last few weeks of last year, especially on small ware, have been very unsatisfactory, particularly so since the first of January. The year, however, is young and we are not at all uneasy but we have heard persistent rumors, and in many cases absolute facts as to ridiculous prices being made on the part of certain manufacurers.'

"'Business is very dull. We have had a most remarkable falling off in business within the last thirty days. We know that this is largely due to the severe weather. It has been almost impossible to do hauling; locally, a great many contractors are not working on buildings at the present time, so that they require no goods whatsoever. We believe the dullness in trade at this time is probably not due to any cutting in prices, but we believe it is due more largely to the severe winter which has practically put the building business at a standstill.'

"'We are not hearing of any cutting of prices only as reflected by the prices that some of the Jobbers are making. We can see no reason why manufacturers should be discouraged over a lull in business

at this season of the year, because January is usually a month of inventories and do not look for much business. For your information wish to say, however, that our business is considerably better than it was last January and we are very optimistic about the prospects for 1910.' 1

"'Your letter of January 18th regarding the state of the market and advising that several of the Manufacturers report business unusually dull, received. We have found it so, but know that the loss of business to our Company, at least, is not a question of price, and it is one of the biggest kind of mistakes for Manufacturers to quote low prices as it does not bring out any more business. Just now the business is not there and it would seem to the writer the best way to stimulate business would be to steady the price if possible.' 2

"Yours very truly,

"Commissioner."

Q. Will you look at Exhibit No. 291, being the letter addressed to Mr. J. A. Kelly, and dated March 15, 1910, signed by you, and I direct your attention to the fact that Mr. Kelly's name is in original typewriting and the rest is a carbon. Was that a letter sent out by you to the various members of the Association? 3

Mr. NOBLE: I object; the witness cannot state if the letter was sent out; whether he wrote that letter he might say, but he cannot say whether it was sent.

A. I remember writing such a letter.

Q. That is your signature, is it? A. Yes, sir.

Q. Did you write it for the purpose of sending it out to the various members of the Association? A. Yes. 4

Mr. GROSVENOR: Petitioner's Exhibit No. 291 reads as follows:

1 THE SANITARY ENAMELED WARE ASSOCIATION
1509 Arrott Building,
Pittsburgh, Pa.

E. L. Wayman,
Commissioner. W-3151011-I

March 15th, 1910.

Mr. J. A. Kelly,
C/o Iron City Sanitary Mfg. Co.,
Pittsburgh, Penna.

2 Dear Sir:

In view of the bad weather conditions that have existed, jobbers' stocks throughout the country are very heavy.

Prices that are being made here and there by some of the manufacturers are not creating any new business but are simply disturbing conditions to the detriment of all the manufacturers and making the jobbers dissatisfied and uneasy.

Many of the leading jobbers with whom I have personally talked have expressed the desire that the manu-
3 facturers sustain the market and stop quoting some of the ridiculous prices that have been made recently. The business is not to be had at any price as it doesn't exist.

Many of the factories which I have recently visited have appreciated the conditions and are running very light. They will continue to do so until the demand legitimately increases.

In view of the fact that we will have a meeting the latter part of the month, the Results of which will unquestionably be beneficial to all, I trust that in the
4 meantime you will do your share towards correcting some of the "foolishness" that has been apparent the last two or three weeks.

Yours very truly,
(Signed) E. L. Wayman,
Commissioner.

Q. I now show you Exhibit No. 292, which is dated April 27, 1910, and addressed to Mr. J. A. Kelly, and I point out the fact that the name of Mr. Kelly is in original typewriting and

the rest is in carbon, and I ask you if that was written by you to be sent out to the various manufacturers of the Sanitary Enameled Ware Association? 1

Mr. NOBLE: I object to the question on the grounds previously stated, and I call attention to the fact that the letter is written on the letterhead of Mr. Wayman and he has already stated a number of times that any matters that had to do with his license plan he did not send to the members of the Association but sent them to the individual manufacturers of sanitary enameled iron ware.

2

A. I remember issuing such a letter in connection with the license agreement.

Q. And this is on your personal letterhead? A. Yes, sir.

Q. And that is your signature? A. Yes, sir.

Q. It refers to the Niagara Falls meeting about which you testified? A. Yes, sir.

Q. Now, is it not a fact that during the latter part of 1909 and the early part of 1910, the competition between the various manufacturers of sanitary enameled iron ware had been keen as to prices?

Mr. NOBLE: I object to the question as to prices. How can this witness, who was not then a manufacturer, answer such a question. 3

Mr. GROSVENOR: If you are not able to answer the question, please read these letters for the purpose of refreshing your recollection as to the conditions prevalent during the time I mentioned (handing same to witness).

A. The competition between some of the companies on certain lines of goods was very keen. In fact, I know of goods being sold below cost.

4

Q. Did you represent to any of the manufacturers in talking to them about the license arrangement or the proposed license agreements that they would improve conditions in these respects, that is, that it would enable them to eliminate the trouble which had arisen out of these excessively low prices to which you refer?

A. That was one of the conditions considered in the license agreements. That is, I hoped, of course, to get a revenue for

each of the companies to enable them to make a reasonable profit.

Q. It was then your expectation, that your agreements, if entered into, would prevent the continuance of these troubles due to excessively low prices?

Mr. NOBLE: I object to the question. It is an attempt to make the witness, by making references to a part of the letters and answer as to a part of them, apparently speak as to the whole. The question is not fair.

Mr. GROSVENOR: Read the question, please, will you?

The stenographer then read the last question.

A. Well, I had hoped as one of the features of the license agreements, to enable the companies to abolish ruinous competition.

Q. And that was one of the inducements that you held out to them, when you asked them to enter into these license agreements?

Mr. NOBLE: I object to that on the ground that it is immaterial, incompetent and irrelevant.

A. Yes.

Q. Among others? A. Yes.

Mr. GROSVENOR: Petitioner's Exhibit No. 292 reads as follows:

"April 27th, 1910.

"Mr. J. A. Kelly,
"c/o Iron City Sanitary Mfg. Co.,
"Pittsburgh, Penn'a.

"Dear Sir:—

"I have just returned from Niagara Falls, N. Y., at which point the Jobbers throughout the country, with the exception of those located on the Pacific Coast, held a meeting for the purpose of organizing a National Jobbers Association. Such an Association was formed and it is said that this meeting was one of the most representative ever held.

"The writer was given the opportunity of appearing

before the Jobbers in Executive Session and of explaining the license and resale agreement plan that will go into effect on June 1st. The matter was discussed in detail, thoroughly explained and all possible objections satisfactorily answered. As a result they gave their *unanimous approval* of the entire matter and pledged their support and hearty co-operation subject to all the conditions named in the Jobber's Agreement Form, copy of which you have. 1

"This, together with the approval already given by the Pacific Coast jobbers, establishes the fact that the Jobbers universally with a few exceptions are ready, entirely willing and want to work in harmony with the manufacturers' plans for the promotion of improved trade conditions and the production and disposal of a higher grade of ware. 2

"I wish to add further that the approval given at this meeting was not of an ordinary formal, half hearted nature but direct and of a different character than I have heretofore seen or heard of in any former negotiations with your distributors. I was made to feel that the manufacturers are pursuing the *only* and *proper* course. 3

"Yours truly,

"E. L. Wayman."

Q. Mr. Wayman, on your examination by the counsel for the Government, on October 31, 1910, you were asked certain questions appearing on page 31 of the Record respecting Petitioner's Exhibit No. 7, printed in the volume of the exhibits, which is known as volume 2, on page 12, the exhibit being the minutes, of the third meeting of the members of the enameled Ware Association, held February 1, 1910; and particularly you were questioned respecting a request from New York jobbers that the manufacturers meet their committee to confer on the subject of resale prices and the recognition of only Blue List jobbers. Will you look at that exhibit and read particularly this paragraph (indicating)? 4

The witness did as requested.

Mr. GROSVENOR: Have you read it?

THE WITNESS: Yes.

Q. You testified on page 31:

1 "A. That came in the shape of a request to me as Commissioner of the Sanitary Enameled Ware Association.

"Q. From whom?

"A. The New York jobbers.

"Q. From whom was it?

"A. A man named Conchar, as Secretary of a New York organization. I have forgotten the exact name of it. It was the Metropolitan Jobbers Association, or something like that."

Please read this testimony here on pages 31 and 32 of the
2 Record?

A. Yes, I remember it perfectly.

Q. Now, I show you a carbon copy of a letter dated February 2nd, 1910, and addressed to Mr. J. W. Conchar, 41 Park Row, New York, and ask you if that is a copy of a letter sent by you to him on the day indicated?

Mr. NOBLE: I object to the letter, on the ground that it is incompetent, immaterial and irrelevant and for the same reasons as previously stated.

A. Yes, I remember sending this letter.

3 Q. Is that a copy? A. Presumably so.

Q. Did you send a copy of that letter to the various members of the Sanitary Enameled Ware Association?

Mr. NOBLE: I object on the same grounds previously stated.

A. I am under the impression that I did.

Mr. GROSVENOR: I offer this as Petitioner's Exhibit No. 293.

Letter referred to was then marked and filed as "Petitioner's Exhibit No. 293."

4 Mr. NOBLE: I object. That is not proper re-direct examination on the part of the Government, and the letter is incompetent, immaterial and irrelevant.

Mr. GROSVENOR: I suppose I should say that this letter was not in the possession of the Government at the time of the direct examination of Mr. Wayman.

Mr. NOBLE: The same objection.

Petitioner's Exhibit No. 293 reads as follows:

"Feb. 2nd, 1910. 1

"Mr. J. W. Conchar,
"41 Park Row,
"New York City.

"Dear Sir:—

"Replying further to your letter of Jan. 6th and referring to my letter of the 10th, W-1101004-I regarding requested changes in Trade Customs by the M. P. S. J. Ass'n. This matter was considered yesterday at the meeting of the manufacturers, together with your request that the manufacturers meet a Committee from your Association to confer on the subject of re-sale prices and the recognition only of the Blue List jobbers in your city. 2

"The manufacturers wish to advise you that they are now trying to work out the scheme of Re-sale Prices and at the meeting yesterday considerable progress was made in this direction. You can well realize that this matter is of considerable magnitude and covers numerous subjects that have to be disposed of satisfactorily in harmonizing 19 manufacturers together with their distributors. 3

"The manufacturers believe that the plans they have in view, while they may not embrace all of the requests that have been made by your Association, will be of such scope, that they will be able to provide for reasonable profits to the jobber, thereby making enameled iron ware more desirable to handle, than in the past.

"The manufacturers will be pleased to meet your Committee just as soon as their own plans are in a more concrete form and believe this will be the case in the near future. 4

"I will be pleased to arrange this meeting just as soon as possible.

"Yours very truly,

"Commissioner."

Q. Mr. Wayman, you said during your examination by Mr. Noble that you obtained an option on the Arrott patent on December 28? A. Yes, sir.

Q. 1909, from Mr. Dawes? A. Yes, sir.

Mr. NOBLE: This testimony was gone into by the Government on direct examination. He testified to the same thing in reply to the Government's questions at that time. This is not proper re-direct examination.

Q. Can you give the terms of that option?

A. Yes. Mr. Dawes gave me an option to exercise in six months either to become an exclusive licensee, they retaining a non-exclusive license, or if they decided to take a license from me, to sell me the Arrott patent for a term of five years.

Q. Previous to this meeting on December 28, with Mr. Dawes you had had other meetings with him? A. Yes.

Q. At those meetings had he expressed an unwillingness to consent to any arrangement whereby the Standard Sanitary Manufacturing Company should lose entire control of the Arrott patent?

THE WITNESS: What was that question.

The last question was then read by the stenographer.

Mr. NOBLE: I object to the question on the ground that it does not state what the witness said at all. If the Government means to inquire what the witness said, I have no objection, but I do object to the form of the question and to its terms as not being a correct statement of what the witness has testified to.

A. That is, he did at first. He had gradually led up to it.

Q. This meeting of December 28, then, was the first meeting at which he stated that he would be willing to enter into an arrangement whereby you could control the Arrott patent? A. Or purchase it.

Q. That is, this is the first meeting at which he indicated a willingness to deal with you?

A. No, I was gradually making headway with Mr. Dawes from time to time, and on December 28, we came to this agreement.

Q. That was the first time that he definitely stated to you that he would enter into an arrangement with you?

A. Yes.

Q. Was the word "option" used on that day?

A. Yes, sir.

Q. Who used it? 1

A. Mr. Dawes in talking to me. That is what I was after, an option.

Q. But you did not pay anything for it? A. No, sir.

Q. If you had obtained an option on December 28 from Mr. Dawes, why, in March, when Mr. Torrance signed the memorandum of agreement on behalf of the Standard Sanitary Manufacturing Company, namely, Petitioner's Exhibit No. 3, did you state to him—as you testified yesterday you did in answer to Mr. Noble's question—why did you state to Mr. Torrance, "Now, this means that you will enter into a license agreement with me?" A. No. 2

Q. What did you say?

A. I said "This means that you will sell me the Arrott patent." The Exhibit you are referring to was a memorandum of agreement to enter into a license agreement, so when Mr. Torrance signed this agreement for the Standard Sanitary Manufacturing Company to enter into a license agreement, then I said this means he would enter into a license agreement with me as owner of the patent.

Q. So that instead of you taking the patent and their retaining its use, you were to buy the patent? A. Yes, sir.

Q. On December 28, had you agreed with Mr. Dawes what 3 you should pay?

A. We had discussed the price, but we had made no absolute agreement.

BY MR. NOBLE:

Q. As to the price? A. Yes, as to the price.

MR. GROSVENOR: That option you testified was in alternative form?

THE WITNESS: Yes, sir.

BY MR. GROSVENOR: 4

Q. It permitted you to buy or to get an exclusive license?

A. Yes, sir.

Q. Was the amount which you were to pay considered?

A. Yes.

Q. And discussed? A. Yes, sir.

Q. No agreement was reached? A. No, sir.

Q. When did you first reach an agreement as to what should be paid? A. Some time in March.

Q. After this meeting with Mr. Torrance?

A. Yes, because when Mr. Terrance signed that memorandum of agreement to enter into a license agreement, he referred me to Mr. Dawes regarding the details as to the purchase of the patent.

Q. Was Mr. Dawes the officer who determined on the amount you should pay for the patent? A. Yes.

Q. You had no discussion with any other members?

A. No, I do not recall discussing the price of the patent with any other member of the firm.

Q. Did you tell Mr. Dawes on December 28, or previous to that time, that it was your intention, if you obtained control of the patent, by either of those methods allowed you by the option you have described—did you tell him that it was your intention to obtain agreements from the other manufacturers of sanitary enameled ware to take licenses from you?

A. Well, I don't recall whether I did or not. I do not remember it.

Q. Did he ask you why you wanted an option.

THE WITNESS: In what connection? I do not understand your question.

Mr. GROSVENOR: Let me make it clear: Here is a patent which you testified was a valuable patent and which was owned by the Standard Sanitary Manufacturing Company. You had been to see the officers of the Company previously to December a number of times, you testified, with the object of inducing them to give you control of the patent. Did you tell them what your plans were?

A. I don't recall that I did. Of course, I wanted to get an option before I went ahead and did a lot of work that might not have amounted to anything in the end.

Q. You testified yesterday that before you left Detroit that you discussed with Mr. Colquitt and your wife your plans. Now, when you went to Mr. Ahrens in August, 1909, and asked him about giving you control of the Arrott patent, did you discuss with him your plans?

A. Why, my conversation with Mr. Ahrens was very short. He turned me over to Mr. Dawes, saying that it was a manufacturing question and to talk to him. I did not seem to make much impression on him at that time.

Q. Did you tell him of your experience in the electrical business? A. Not that I recall.

Q. Did you tell Mr. Dawes? A. Yes, from time to time. 1

Q. That is from time to time before December?

A. Yes, sir.

Q. Did you tell him how the business was carried on under licenses under patents? A. Yes.

Q. Did you show him the various contracts?

A. I don't recall showing him the contracts at that time.

Q. You discussed, any way, the outlines of the arrangement? A. Yes, sir.

Q. Did you tell him that you had in mind to get up the same sort of license agreements under the Arrott patent?

A. Yes. 2

Q. And to get the other manufacturers to enter into such an agreement?

A. Yes, including his own Company, of course.

Q. And all the others? A. Yes.

Q. Now, when you saw Mr. Torrance in March and he signed, did you tell him at that time about your electrical experience?

Mr. NOBLE: I object to the question stating "he signed."

Mr. GROSVENOR: I mean that he signed for the Standard Sanitary Manufacturing Company. 3

Mr. NOBLE: I object on the same grounds.

Q. You testified yesterday that Mr. Torrance had signed in March for the Standard Sanitary Manufacturing Company to execute an agreement with you?

A. He signed an agreement to enter into a license agreement.

Q. Well, did you at that time, tell him of your experience prior to that time in the electrical business?

A. I do not recall having any detailed conversation with Mr. Torrance in regard to the subject, because he was not interested. The matter in 1908 had been taken up with Mr. Dawes and Mr. Torrance, and as I recall it Mr. Torrance was not interested in the proposition at all. They did not want to lose control of their patent or become so closely associated with the other companies. I imagine— 4

Mr. NOBLE: Only testify to what you know.

Q. Did you acquaint Mr. Torrance with your experience in the electrical business, that is the manner in which that

1 business was carried on, that is with reference to the licenses under patents?

A. I did in a small way, but Mr. Torrance never entered into the subject fully with me.

Q. Shortly after this meeting, though, that you had with him in March, he was appointed on the Price and Schedule Committee on March 30, in New York City? A. Yes.

Q. Mr. Wayman, the important difference between the Seamless Steel Bath Tub Company's ware and that of the enameled ware manufacturers who are the defendants in this suit is this: The Seamless Steel Bath Tub Company made tubs
2 the body of which was of steel, and all the other manufacturers made tubs of enameled ware, the body of which was cast iron?

Mr. NOBLE: You mean the defendants here?

Mr. GROSVENOR: Yes.

THE WITNESS: Of cast iron?

Mr. GROSVENOR: Yes, that is the actual difference between the articles, is it not?

A. Yes, sir; with reference to the body of which the tub was made.

Q. By the body I mean— A. (Interrupting): The shell.

3 Q. The shell which is, of course, the—

Mr. HEATH: The base.

Mr. GROSVENOR: Yes, the base of the whole structure.

A. Yes.

Q. When you saw Dr. Duryea in May, and he signed the agreement with you and the letter which you attached thereto, and which is now Petitioner's Exhibit No. 14, did you tell him what other manufacturers had entered into arrangements with you?

Mr. NOBLE: I object to the question. There is no
4 evidence in this case that Dr. Duryea signed any agreement with Mr. Wayman. Mr. Wayman stated that he granted a license to the Colwell Lead Company, after having a conversation with Dr. Duryea in respect thereto. I object further on the ground that Mr. Honeyman, who is counsel for Dr. Duryea, is not present, and has not been notified of the examination of this witness in respect to the Colwell Lead Company.

Mr. GROSVENOR: In reply to that question I should

state that all of the counsel for the defendants know of these hearings. They have notice of each hearing, and Mr. Honeyman was here yesterday, and knows that the hearing is going on today. 1

Mr. NOBLE: I instruct the witness that he need not answer the question in the form in which it is presented.

Mr. GROSVENOR: What is the question now?

The stenographer then read the last question.

THE WITNESS: Well, acting on instructions from counsel I would not like to answer.

Q. Do you refuse to answer? 2

A. Counsel says that I should not answer.

Mr. NOBLE: If counsel for the Government desires an answer to the question, he can proceed in the regular way to get one by order of Court.

Q. Are these manufacturers today paying you for the use of the patent under the license agreements which they made with you?

Mr. NOBLE: Do you mean his licensees?

Mr. GROSVENOR: I mean the 16 corporation defendants in this case. 3

A. Some of them are and some of them have not paid up to date.

Q. Is the Standard Sanitary Manufacturing Company one of the companies that is paying you today?

A. The Standard, as I recollect, are a little in arrears. I could not testify correctly as to each of the companies from memory.

Q. The agreement went into effect on June 1st, 1910, did it not?

THE WITNESS: That is between the licensed manufacturers and myself? 4

Mr. GROSVENOR: Yes.

A. Yes.

Q. Did the Standard Sanitary Manufacturing Company pay you for the month of June at the rate of $5 per day for every furnace which they operated during June? A. Yes.

Q. And did they so during July? A. Yes, sir.

Q. And for August? A. Yes.

A. I understood some time ago they started up under the name of the Pennsylvania Sink Company.

Q. That is a very small Company, though?

A. Yes, two furnaces; they make sinks, though, and some lavatories. The Louis Lipp Company have, I think, four. I think that is what Mr. Weil told me when I saw him. The Washington Iron Works have two. The Rundel Manufacturing Company of Milwaukee have four.

Q. Do they make bathtubs?

A. I think they do, yes, and small ware; that is the concern whose output is taken chiefly by Sears-Roebuck Company of Chicago, whom I understand are interested in it. Then, the Jones-Holloware Company and Pheil of Columbus —I don't know how many furnaces they have. The companies I just recited previously including the Iron City and Kohler would total 52 furnaces, and I think between the Jones-Holloware Company and Pheil that would make a total of about 55 furnaces.

Mr. GROSVENOR: That is all I have.

EXAMINATION BY Mr. HEATH:

Q. The essential difference between the steel bathtub and the ordinary iron bathtub is that the steel is drawn, is it not?

A. Yes, and the iron tub is cast.

Mr. NOBLE: If I have any other questions, I will ask them when the Record is completed.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

The taking of evidence was then adjourned until Monday morning, April 24, at the Post Office Building, Pittsburgh, Pennsylvania.

IN THE CIRCIUT COURT OF THE UNITED STATES, 1
FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

v.

THE STANDARD SANITARY MANUFACTURING COMPANY.

Pittsburgh, Pennsylvania, April 24, 1911. 2

Pursuant to adjournment, the taking of evidence on behalf of the Government, in rebuttal, was resumed, this 24th day of April, 1911, at the Post Office Building, Pittsburgh, Pennsylvania, before C. John Beeuwkes, Esq., Special Examiner.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq., 3
MARSHALL A. CHRISTY, Esq.,
on behalf of the Standard Sanitary Manufacturing Company and others.

FREDERICK D. COOK, a witness of competent age, produced on behalf of the petitioner, in rebuttal, having been first duly cautioned and sworn, testified as follows:

DIRECT EXAMINATION BY MR. GROSVENOR:

Q. Mr. Cook, what is your residence and occupation? 4

MR. NOBLE: Counsel for the defendants objects to the testimony of witnesses in rebuttal being taken by the Government, for the reason that the defendants have not completed the taking of their testimony. The defendants desire to call other defendants, for whom the defense is set forth in their answer, to prove such defense and to disprove the testimony adduced by the Government in this case. This would involve calling the various defendants who

have not yet gone on the stand and examining more fully the defendants who have gone on the stand. It has been impossible to get the testimony of the defendants who have not taken the stand for the reason that the matters, transactions and things laid in the indictments found in Detroit on or about December 7, 1910, and the matters, transactions and things complained of in this suit are the same or substantially the same, and the defendants have not been willing to take the stand voluntarily and testify fully and freely of their knowledge of the matters, transactions and things involved in this case, for fear that the testimony that they would give might tend to incriminate them. The same thing is true of the defendants who have been on the stand and who were partially examined, and their further testimony is desired to complete the testimony in this action. Further than that, testimony of numerous workmen in the other plants of the licensed manufacturers is yet to be taken. The statements of those witnesses have been taken by counsel for the defendants and he is prepared to examine them as soon as an opportunity can be afforded to put them on the stand. He offers to prove by them the same state of facts which has been proven by the other workmen for other manufacturers whose testimony has already been taken. The defendants further desire to call other jobbers than those who have taken the stand, to prove the same facts in general as to which evidence was offered at the hearing which took place in Pittsburgh on Wednesday, the 19th of April, 1911. The defendants also desire to call witnesses in Detroit in corroboration of the testimony already given by the defendants and offer to prove by their testimony the facts already shown in the testimony of Mr. Wayman and others. The defendants desire me to state, and I do state, that they feel that the situation in which they are placed is one which is unfair to them; that it is inequitable that in a court of equity they should not be allowed an ample opportunity to present their defenses and their proof fully and freely without fear that by defending their personal and property rights they may be called upon to testify about matters, transactions and things which are laid in the indictments in Detroit, before

mentioned, and they pray that the Court will give them 1
an opportunity to present their defense suitably and fully in the belief that by so doing they can establish their defense, as set out in their answers and disprove the evidence offered by the Government, in so far as it may affect them adversely.

At a convenient time the Court will be asked to grant the defendants the opportunities here prayed for.

Mr. GROSVENOR: In reply to the statement of counsel for the defendants, counsel for the Government refers to the record which will show that the defendants have had ample opportunity to prove their case, to wit, from 2
December 21, 1910, until and including April 22, 1911.

BY Mr. GROSVENOR:

Q. Now, Mr. Cook, what is your residence and occupation?

A. Blairsville, Pennsylvania. I am president and manager of the Blairsville Enameled Ware Company.

BY Mr. NOBLE:

Q. President and manager? A. Yes, sir; factory manager.

BY Mr. GROSVENOR:

3

Q. That company manufactures sanitary enameled iron ware? A. Yes, sir.

Q. Of all kinds, that is, bathtubs, sinks and lavatories?

A. Yes, all kinds.

Q. How long have you been engaged in the enameled ware business with the Blairsville Enameled Ware Company?

A. Three years.

Q. Before that were you engaged in the Sanitary enameled ware business A. Yes, sir.

Q. Where?

A. I was manager at McCrum-Howell's, at Uniontown. 4

Q. How long were you there? A. I was there three years.

Q. And before that—

A. (Interrupting): No, that was two years.

Q. And before that?

A. Before that I was manager of the Kellogg-McCrum-Howell Company at Blairsville.

Q. That factory burned down?

A. That factory burned down.

1 Q. How long were you with the Kellog-McCrum-Howell Company?

A. I was with the Kellogg-McCrum-Howell Company from the time they took possession of that plant. I was at Blairsville as mixer for the Champion Manufacturing Company from 1900 to 1903; then the Kellogg-McCrum-Howell Company took charge of that plant.

Q. And you worked with them until it burned down?

A. I worked with them until it burned down.

Q. In what capacity?

A. First as mixer and then as manager.

2 Q. You were mixer for what company before the Kellogg Company? A. The Champion Manufacturing Company.

Q. Is that still in existence? A. No, sir.

Q. Did they manufacture sanitary enameled ware?

A. Yes, sir.

Q. All these companies did? A. Yes, sir.

Q. Before that you were in the Sanitary enameled ware business? A. Yes, sir.

Q. Where?

A. With A. Weiskittel & Son Company, Baltimore.

Q. How long? A. One year.

3 Q. And before that?

A. I was with the Victor Manufacturing Company at Alliquippa.

MR. NOBLE: How do you spell that?

THE WITNESS: A-l-l-i-q-u-i-p-p-a.

BY MR. GROSVENOR:

Q. Did they make enameled ware?

A. They made bathtubs.

Q. How long were you with them?

A. I think it was three years.

4 Q. Was that your first experience in the enameled ware business?

A. That was my first experience in the manufacture of cast iron plumbers' ware.

Q. You mean sanitary cast iron ware?

A. Sanitary cast iron ware, yes.

Q. How many years does that make in all in which you have been engaged in the making of sanitary enameled iron ware, fifteen years or more? A. No, about 13 to 14 years.

Q. You are familiar with the different kinds of dredges used in making of sanitary enameled iron ware? 1

A. Yes, sir; not all of them, but some of them.

Q. You are familiar with the Arrott dredger?

A. Yes, sir.

Q. And you are familiar with the long-handle hand dredge? A. Yes, sir.

Q. And also with the short-handle dredge?

A. Yes, sir.

Q. In calling one dredge a short-handle dredge and the other a long-handle dredge I call your attention to the fact that the long-handle dredge is usually supported by a weight; you have used such a dredge? A. Yes, sir. 2

Q. Can you make good sanitary enameled iron ware with the long-handle hand dredge? A. Yes, sir.

Q. And with the short-handle hand dredge?

A. Yes, sir.

Q. And with the Arrott dredger? A. Yes, sir.

Q. In comparing these three dredges it is a fact, is it not, that the Arrott dredger is the more convenient tool?

A. Yes, sir; it is more convenient; yes

Q. Is the Arrott dredger a necessity

Mr. NOBLE: I object to the question on the ground that it is not sufficiently definite. Necessity for what? The witness has not shown himself qualified to answer a narrow question like that by what you have asked him. 3

Mr. GROSVENOR: Read the question please.

The stenographer then read the last question.

A. No, sir.

Q. Would you say that the proper description of a dredge is to call it a tool used in the manufacture or in the making of sanitary enameled iron ware?

A. Yes, I think the word "tool" would correctly describe it. 4

Q. You have had experience in the mixing of powder?

A. Yes, sir.

Q. And the making of slush? A. Yes, sir.

Q. Is the making of the enameling powder an important element in the business? A. Very important.

Q. Is the making of the slush an important factor in the business? A. Very important.

1 Q. Are those the two most important requisites, namely, to get a good enamel and also a good slush coat?

Mr. NOBLE: I object to this line of questioning on the ground that it is immaterial, incompetent and irrelevant.

Mr. CHRISTY: This question is further objected to as leading.

Mr. GROSVENOR: Will you answer it?

THE WITNESS: Will you kindly repeat it?

The stenographer then read the last question.

2 A. Yes, after you had secured a good casting.

Q. Now, during the 13 or more years that you have been engaged in the enameled ware business, have there been improvements adopted by the manufacturers from time to time in the methods of making the ware? A. Yes, sir.

Q. Have there been changes in the powder? A. Yes, sir.

Q. And in the manner of application of the enamel, that is, whether it be in the wet or the dry form?

A. Well, since I have been in the business the application of the powder has always been in the dry form.

Q. Prior to 15 years ago do you know how it was ap-
3 plied?

Mr. NOBLE: I object to the question. The witness has said that ever since he has been in the business it was applied in the dry form.

Q. Well, you have made a study of the making of enameled ware, haven't you? A. Yes, sir; I have had to.

Q. And of the methods pursued by manufacturers since it has been made? A. To some extent.

Q. Now, are you able to state whether or not the enamel was applied in the dry or liquid form 15 or 18 years ago?

4 Mr. NOBLE: I object on the same grounds as before stated, and further because the witness has stated that he has merely made a study of the matter to some extent. It is not fair to ask him about questions which he has had no experience in.

A. All I know in regard to the liquid process is that since I have been in this business I was advised by parties who had been in it a great many years that when they started in the business the enamel was applied in a liquid

coat, but afterwards they changed to a dry coat because it was more rapid and gave them a better piece of ware. 1

Q. Can you name any important change in the making of the enameling powder within your experience?

Mr. NOBLE: Objected to on the ground that it is incompetent, immaterial and irrelevant.

A. The greatest change that I know of is in the introduction of the oxide of tin as a whitener.

Q. What purpose does that serve?

A. Why, it makes the enamel white, just exactly as lime put in water will make whitewash.

Q. How many years have they used oxide of tin? 2

A. I cannot give you the exact dates, but I believe the first firm to use it was the Ahrens & Ott Company of Louisville, and I think it was in the early 90's that they introduced it.

Q. Now, is the ware that was made ten years ago equal in quality to the ware that is made today?

A. As far as appearances go, the ware was equal then, I think to what it is today.

Q. But there have been improvements in the art of making it, is that right?

A. Yes, there have been improvements in furnaces, in enamels and in slushes. 3

Q. And also in dredges? A. And also in dredges.

Q. And the improvement in the dredges to which you refer is in the use of a pneumatic or electric dredger as compared with the hand dredge?

Mr. NOBLE: Objected to.

A. The introduction of a power dredger of any sort as compared with the hand dredge.

Q. Are you able to state from your consideration of the improvements in the art of making enameled ware what per cent. of improvement is due—that is, in the manufacture—to the introduction of the power dredger? 4

Mr. NOBLE: Objected to on the ground that it is purely speculative and calls for an opinion which in the nature of things must be a wild guess on the part of the witness.

Mr. GROSVENOR: Not at all. This witness has studied the subject and has been in the business and

observed the art of manufacture. Certainly he can testify as to what cause was instrumental in bringing about improvements.

A. My opinion is that about 25 to 30 per cent. of the improvement is due to the introduction of power dredgers.

Q. And what per cent. of the improvement which has occurred in the manufacture of enameled ware during the period of your experience is due to other causes than the introduction of the power dredger?

A. The other causes of improvement come under the head of improvement in slushes, improvement in enamels and improvement in furnaces.

Q. And those aggregate about how much?

A. Those aggregate the balance, from 70 to 75 per cent.

Q. Do you know Mr. Homer F. Staley? A. Yes, sir.

Q. Have you discussed this subject with him, namely, the improvements in the making of enameled ware as made in the last ten or fifteen years?

A. Mr. Staley visited me at Blairsville some time ago and the matter was up for discussion between us and I stated to Mr. Staley at the time—

Mr. NOBLE: I object to this on the ground that it is utterly immaterial, incompetent and irrelevant. It is hearsay and is an attempt to raise a collateral issue which is not involved here in any way apparently.

Mr. GROSVENOR: Mr. Staley has been a witness for the defendants in this case, and the question that is addressed to this witness has the proper bearing on his testimony. Go ahead.

A. (Continuing): I stated to Mr. Staley at the time that I thought that about 25 per cent. of the improvement in enameled ware was due to the introduction of improved dredgers.

Q. Did he express any dissent from that?

A. He did not express any dissent, but he did not say positively that he agreed with me.

Q. Is the inspection of the product of manufacturers which is made by the manufacturers, of their ware, before it is put on the market—I say, is that inspection any more careful today that it was ten years ago?

Mr. NOBLE: I object to the question except in so

far as it is the witness' own knowledge and his own particular experience. 1

A. I think and my experience is that the gradation of the ware depends very much upon the price.

Q. The price in the market?

A. The price in the market, that as the price increases the ware is graded more carefully and as the price goes down they are not so particular in grading their ware.

Q. During the last three years during which time you have been president and manager, I understand, of the Blairsville Enameled Ware Company, have you used the hand dredge the larger part of the time? 2

Mr. NOBLE: Objected to as leading.

A. I used the hand dredge for about 18 months and still use it occasionally.

Q. Did you have any difficulty in getting enamelers to use the hand dredge? A. No, sir.

Q. Does the character of the dredge, whether it be hand or pneumatic, make any difference as to the weight of the casting?

THE WITNESS: The weight of the casting? 3
Mr. GROSVENOR: Yes.

A. No, I don't think it does. You mean the weight of the casting after it is enameled?

Q. I mean this, by the casting I refer to the cast iron tub before the enamel is placed on it. When you changed from a hand dredge to a power dredger do you change the weight of the casting or do you use the same casting for both dredges?

A. I use the same casting for both dredges.

Q. Is there any material difference in the saving of the powder by using the hand dredge as compared with the power dredger or in the use of the power dredger as compared with the hand dredge? 4

A. I think one is apt to use a little more powder by use of the power dredger.

Q. Why is that?

A. Well, it goes on a little quicker and more easily and the casting will only take powder while it is hot, and the enameler generally puts on what powder he can on the first dredge, and

of course when you use a power dredger it goes on more rapidly and the casting will take more.

Mr. GROSVENOR: That is all.

CROSS EXAMINATION BY Mr. NOBLE:

Q. Mr. Cook, you say that in your plant, which I understand is the Blairsville Enameled Ware Company—

A. Yes, sir.

Q. That upon the question of inspection when the prices are high you inspect more carefully and grade the ware a little differently from when the prices are low; is that correct? A. Yes, sir.

Q. How long has that been your practice, throughout your connection with the company? A. Yes, sir.

Mr. GROSVENOR: I don't think that was an exact statement. I don't think he confined his answer to my question to the Blairsville Company.

Mr. NOBLE: I asked him to confine his answer to his own experience. You are speaking from your own experience, aren't you?

A. From my own and from my general knowledge of the other manufacturers.

Q. But you are speaking of what you do at Blairsville when you say that? A. Yes, naturally.

Q. Now, Mr. Cook, speaking of the power dredger which you referred to, you say that you can get the enamel on the article which is being enameled more quickly? A. Yes, sir.

Q. Is it not a fact that it is necessary to get the powder on the tub or the articles being enameled while they are very hot in order to have it adhere properly?

A. It must be at the proper heat. I do not understand the word "adhere."

Q. In order to make it stick to the casting?

A. You get the tub in the furnace to a red heat and take it out and throw it on the table and put powder on as long as you can, as long as it will take the powder.

Q. By the word "adhere," I meant the same as you meant by holding the powder, in order to get it to stick properly; is that what you meant? A. Yes, sir.

Q. It is an advantage to get all over the article each time you take it out of the furnace, is it not? A. Naturally.

Q. So that the casting does not lose its heat and have to go back in the furnace? 1

A. It always has to go back in the furnace.

Q. So it does not have to go back in the furnace before you complete the particular coat you are putting on?

A. It always has several coats.

Q. After an article has been heated to a cherry red heat or thereabouts, the enameler takes it out and starts to put on the enameling powder, is that correct? A. Yes, sir.

Q. While the article holds its heat he can put on the enameling powder, is that correct?

A. Yes, while the article holds its heat he can put on the enameling powder. 2

Q. If anything happens to delay him in putting on the enameling powder so he cannot get it all over the article he is enameling, then he must put it back in the furnace again and heat it up, is that correct? A. Yes, sir.

Q. So if I understand you, when talking to Mr. Grosvenor you spoke of one of the advantages of the power dredger as being that you could get powder on more quickly?

A. Yes.

Q. That it went on more rapidly while it was hot?

A. Yes. 3

Q. You were speaking of that in comparison to the old hand method, that is where you used the old long—or short handle dredge and beat the handle? A Yes, sir.

Q. Have you ever enameled a tub? A. Yes, sir.

Q. How many?

A. Well, I think I have enameled probably 50 to 75, maybe more.

Q. It was largely experimental in your doing it?

A. Well, the tubs were salable.

Q. Did you use the power dredger?

A. No, sir; I used the hand dredge. 4

Q. How many years ago was that, Mr. Cook?

A. That was about 1898.

Q. That would be about 23 years ago? A. Oh, no.

Q. About 13 years ago? A. Yes, sir.

Q. Since that time you have been, I suppose, chiefly on the business side of the firms you have been with, you have had more to do with the commercial side of it?

A. Well, I have had charge of the factory.

1 Q. Have you had charge in any of these factories of the sale of the goods? A. No, sir.

Q. Now, if I remember these places, one of your places of employment was at Uniontown, is that correct?

A. Yes, sir.

Q. Whom were you with there?

A. The McCrum-Howell Company.

Q. What years were you there? A. From 1905 to 1907.

Q. What were you doing there? A. I was manager.

Q. What of? A. Of the enameled ware plant.

Q. And you spoke of being with the Champion Company;
2 when was that? A. I went with them in 1900.

Q. You were there the mixer of the enameling powders?

A. Yes, sir.

Q. What did you do at Weiskittel's?

A. I was mixer at Weiskittel's.

Q. You spoke of knowing Mr. Staley, was he there at the same time, at Uniontown? A. Yes, sir.

Q. What was his position? A. Mixer.

Q. Wasn't he also superintendent; didn't he have the title of superintendent?

A. I think he did after I left.

3 Q. Oh, he stayed there after you left? A. Yes, sir.

Q. Did you ever operate the old short-handle dredge?

THE WITNESS: Do you mean personally?

Mr. NOBLE: Yes.

A. Oh, yes.

Q. How long?

A. Well, I have done it occasionally but I never made a practice of it.

Q. You simply took it up from time to time.

A. From time to time, yes.

4 Q. And tried it out for a little while? A. Yes.

Q. How about the long-handle dredge, did you ever operate that?

A. Just at the time I spoke to you of, in '98.

Q. When you made those tubs? A. Yes, sir.

Q. You did that with the long-handle dredge?

A. Yes, sir.

Q. You never used any other dredges personally except the short-handle dredge and the long-handle dredge?

A. That is all.

Q. If you got a heavy casting would that hold heat as long 1
or longer than a light casting?

A. It would hold it longer.

Q. Then, assuming that you have a light casting that is sufficiently heavy to make a good tub or sink or whatever article you are attempting to enamel it is an advantage, is it not, to be able to get over the article quickly while it holds the heat? A. Yes, sir.

Q. If you could get over it quickly you could afford to make it a lighter casting, couldn't you, assuming you had enough iron in it to have it in proper shape?

A. No, I don't think so. If you have a lighter casting it 2
would be cheaper to put on more powder rather than a heavier casting.

Q. So if you had a power dredger you could get over a lighter casting more quickly?

A. Well, you could use the hand dredge a greater number of times?

Q. But you would not have to put it back in the furnace so many times with the power dredger? A. No, sir.

Q. And putting it back in the furnace makes furnace cost, doesn't it? A. Yes, sir.

Q. It makes additional cost to the manufacturer in the 3
use of his furnace? A. Yes, sir.

Q. With the power dredger you can enamel more pieces in the same length of time? A. Yes.

Q. And you can keep your furnace busier? A. Yes, sir.

Q. And you can get more ware out? A. Yes, sir.

Q. And you get better enamel from the same points of heat? A. Yes, sir.

Q. Have you ever made any experiments to determine whether you used more powder with the hand dredge than with the power dredger? Did you ever make any actual calculations yourself?

A. I never made any actual calculations, no. 4

Q. I believe you said, Mr. Cook, that you left the plant at Uniontown which was the plant of McCrum-Howell Company, in the fall of 1907; is that correct?

A. I think that is correct.

Q. Do you know whether it was the fall or spring?

A. It was the fall.

Q. How long were you with the company there after the

1 plant was rebuilt, that was only a few months after the plant was rebuilt, wasn't it?

A. No, it was longer that that. It must have been, I think, over a year.

Q. Well, since you left there you have been with the Blairsville Company, is that correct? A. Yes, sir.

Q. And those are the only two places where you have ever had any experience with power dredgers, is that correct?

A. No, the Kellogg-McCrum-Howell Company at Blairsville used the power dredger.

Q. How much?

2 A. I think they used it pretty steadily for the last two years there.

Q. How many? A. Oh, possibly three.

Q. How many furnaces did they have at that time?

A. At the time of the fire they had three tub furnaces and a small ware furnace.

Q. How many did they have in the new plant?

A. They had eight furnaces.

Q. And how many have you had at Blairsville?

A. We have three at Blairsville.

Q. Since when did you build three?

3 A. We built one in 1907—1908.

Q. And you built the last two recently, haven't you?

A. We built two more early in 1910.

Q. Have you used the power dredger at Blairsville?

A. Yes, we have used the power dredger.

Q. How long did you use it?

A. We have used the power dredger at Blairsville for about eighteen months.

Q. Are you still using it? A. Yes, sir.

Q. How does it work? A. Works all right.

Q. Explain the power dredger, will you, that you are

4 using there?

A. We have used and are using both the electric and pneumatic.

Q. Explain how it works, will you?

A. We have an electric dredge that works either with a flexible shaft or a motor, and at the end of the shaft is a cam that oscillates the dredge sideways very rapidly.

Q. By a series of blows on the sides of the sieve?

A. The dredge is pivoted; it does not touch the sieve.

Q. And it operates against the frame on which the sieve swings? 1

A. Yes, against the handle. It is like that (indicating).

Q. How does the pneumatic dredger operate?

A. We use the Chicago pneumatic tool hammer.

Q. This pneumatic dredger which you have has a pneumatic hammer which strikes a rapid succession of blows, is that the way it works? A. Yes, sir.

Q. And that fits in the end of the handle?

A. It has a socket or a kind of bell in the end of the handle.

Q. And you insert the hammer in that bell and hold it in position and the hammer hammers against the end of that? 2

A. Yes, sir.

Q. You discontinued, as I understood you to say, the use of the hand process except occasionally?

A. Yes, we were using it last week.

Q. Had a break down? A. Yes, had a fire.

Q. You only use it in case of a break down or some extraordinary situation? A. Yes, sir.

Q. Ordinarily you use these automatic dredgers entirely?

A. They are not automatic, but power dredgers.

Q. In other words, when you use the word "power" you mean there is a blow struck by some sort of power? 3

A. Yes, sir.

Q. Rather than by the hand?

A. Yes, we have to furnish the power.

Q. So far as the operator of the dredge is concerned, that is the man who is doing the work, it is automatic?

A. He only has to direct the control of the power.

Q. And guide the sieve over the article which he is enameling? A. Yes, sir.

Q. And he has both hands free for that purpose, hasn't he? A. Yes, both hands free.

Q. Where is your company incorporated? 4

A. Pennsylvania.

Q. You gave an opinion as to the improvements there had been in the manufacture of sanitary enameled iron ware, dividing it up into 100 per cent. and attributing some portion to one thing and some to another? A. Yes, sir.

Q. Did you ever compile any data and conduct any experiments to arrive at that opinion?

A. I never conducted any experiments. I speak from my general knowledge of the business. What I meant was this—

Q. I asked you if you had ever compiled any data or conducted any experiments as a basis of your opinion?

A. My opinion is based on results that I have noticed in the factories.

Q. Mr. Cook, given the same kind of a casting, the same kind of a slush coat, the same kind of enameling powder, you have found it, in your factory, advantageous to use what you have described here as a power dredger, have you not?

A. Yes, sir.

Q. Speaking from a commercial point of view, if you have an opinion on commercial questions, I understood you had nothing to do with the commercial side of it—but speaking from a commercial point, it is better to have the enameled iron ware attractive to the public, is it not? A. Yes, sir.

Q. And the smoother the ware is the more apt the public is to buy it? A. Yes, sir.

Q. Speaking from a commercial point of view it is an advantage to have the enameled article smooth and white, is it not? A. Yes, sir.

Q. And that is one of the objects which you, in manufacturing enameled iron ware seek to obtain? A. Yes, sir.

Q. If you have to stop to put the article which you are enameling back into the furnace before getting it enameled all over after taking it out of the furnace, you are very apt, are you not, to get an uneven piece of ware?

THE WITNESS: When it is finished?

Mr. NOBLE: Yes, the enamel is apt to be thicker in some places than in others?

A. Not with a good operator.

Q. A man using one of these Arrott dredgers can get all over it in one turn?

A. Well, you can with the hand dredge get all over it in one turn.

Q. If it was a large article? A. As large as a bathtub.

Q. Could you get over it as quickly as you could with the Arrott dredger? A. No, sir.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

WILLIAM H. LOSE, a witness of competent age, produced on behalf of the Petitioner, in rebuttal, having been first duly cautioned and sworn, testified as follows: 1

DIRECT EXAMINATION BY Mr. GROSVENOR:

Q. Mr. Lose, will you please state your residence and occupation?

A. Zelienople, Pennsylvania; superintendent of the Iron City Sanitary Manufacturing Company.

Q. You have direct charge of the factory? A. Yes, sir.

Q. How long have you been superintendent of the Iron City plant? A. About five years—six years.

Q. And before that where were you? 2

A. In the foundry, foundry foreman.

Q. There? A. Yes, sir.

Q. How many years have you been engaged in the enameled ware business? A. About twenty.

Q. Where else have you been besides at Zelienople?

A. Chattanooga, Tennessee, with the Cahill Iron Works; Muncie Sanitary Manufacturing Company, at Muncie, Indiana; Blairsville and the Victor Sanitary Manufacturing Company and the Standard Sanitary Manufacturing Company.

Q. All of these companies you have named manufactured sanitary enameled iron ware when you were with them? 3

A. Yes, sir.

Q. And you were engaged in that part of the business?

A. Not in all of them; not with the Standard Sanitary Manufacturing Company I was not.

Q. With the exception of the Standard Sanitary Manufacturing Company you were engaged in the manufacture of sanitary enameled iron ware? A. Yes, sir.

Q. Are you familiar with the various kinds of dredges used? A. Yes, sir.

Q. In the enamel ware business? A. Yes, sir. 4

Q. Have you used the long-handle dredge? A. Yes, sir.

Q. And the short-handle dredge? A. Yes, sir.

Q. And it has been used under your direction?

A. Yes, sir.

Q. Have you used any power dredgers? A. Yes, sir.

Q. Are you able to make good sanitary enameled ware with the hand dredges? A. Yes, sir.

Q. With the long-handle dredge? A. Yes, sir.

Q. And with the short-handle dredge? A. Yes, sir.

Q. Bathtubs and small articles? A. Yes, sir.

Q. Would you call a dredge a tool used in the manufacture of sanitary enameled iron ware? A. Yes, sir.

Q. The long-handle hand dredge was been supported by a weight where you used it? A. Yes, sir.

Q. And the short-handle hand dredge entirely supported by the workman? A. Yes, sir.

Q. The power dredger is a more convenient tool than the hand dredge? A. Yes, sir.

Q. Is the power dredger a necessity in the making of sanitary enameled iron ware? A. No, sir.

Q. Good sanitary enameled iron ware? A. No, sir.

Q. Is the enameling powder used an important factor?

A. Very.

Q. Is it also important to get a good slush coat?

A. Yes, sir.

Q. Is the character of the furnace an important factor?

A. Yes, sir.

Q. And the components which make up the pig iron?

A. Yes, sir.

Q. And the furnace in which is made the enameling powder, is the character of that furnace important?

A. Yes, sir.

Q. Have there been improvements in the art of making enameled ware during the time you have been in the business? A. Yes, sir.

Q. Improvements in the enameling powder?

A. Yes, sir.

Q. And in the making of the slush? A. Yes, sir.

Q. And in the character of the furnace? A. Yes, sir.

Q. And in the character of the pig iron?

A. Yes, sir; but there has not been the advancement that has been made in the others.

Q. There have been distinct advances made in the others?

A. Yes, sir.

Mr. NOBLE: Don't lead the witness. Let the witness testify himself.

Q. There have been improvements in the character of the dredge used? A. Yes, sir.

Q. Now, taking together all these improvements in the different parts or branches of the business, what percentage

of improvement will you attribute to the improvement brought about by the use of the Arrott dredger? 1

Mr. NOBLE: I object to the question on the ground that it is purely guesswork on the part of the witness. No foundation has been laid for the witness expressing an opinion on the question of these percentages.

Mr. GROSVENOR: Will you read the question?

The stenographer then read the last question.

A. I would not care to hazard an opinion on percentage. There is a distinct advantage, though.

Q. Is it a distinct advantage? A. Yes, sir. 2

Q. That is the power dredger?

A. Yes, sir; my answer is not on the power dredger, but on the improvement—that is the powder and the slush, as to percentage, that is the way I understood it. As applied particularly to the dredger, is that the question? I don't understand it that way.

Q. I understood you to say that the power dredger is an advantage over the hand dredge?

A. I did not understand it that way.

Q. Well, is the power dredger an advantage over the hand dredge? A. As a convenience, yes. 3

Q. Now, comparing the relative advantage of the power dredger over the hand dredge and the advantages obtained by the other improvements that you have named, are you able to state of all the improvements what percentage the power dredger is?

Mr. NOBLE: Objected to.

A. As I said before, I would not hazard a percentage. I would only say that there is a distinct advantage in the accessories that you have named, that is the furnace and the slush and the powder. 4

Q. Did you have any difficulty in getting enamelers to work with the hand dredge? A. No, sir.

Q. Did you ever have any difficulty? A. No, sir.

Q. You changed the weight of your castings when you changed from the hand dredge to a power dredger?

A. No, sir.

Q. Or when you changed from a power dredger to a hand dredge? A. No, sir.

Q. Is there any material difference in the amount of powder used between the hand dredge and the power dredger? A. Yes, I think there is.

Q. With which do you use the most powder, the hand dredge or the power dredger? A. The power dredger.

Q. Why is that?

A. Well, it will distribute it somewhat faster and the operator is not so particular about the amount of powder that is put on in excess, by reason of the fact that he has not got to put it by reason of any effort on his part, that is with the power dredger.

Q. Was the enameled ware manufactured ten years ago on an average as good as the enameled ware made today?

A. I think so.

Q. Was the inspection ten years ago as particular as it is today? A. Yes and no.

Q. What do you mean by that answer?

A. Well, it depends on the conditions of trade as to inspection.

Q. If prices are high the inspection is more close?

A. No, sir.

Q. Then, please explain what you mean?

A. It is the other way, just the opposite, in my experience; when business is good there is more demand and the inspection is not so critical.

CROSS EXAMINATION BY MR. NOBLE:

Q. Then, at the Iron City plant, as I understand you, when there is a great deal of business going on and prices are high, the inspection is not so drastic as it is when prices are low, is that correct? A. I did not say that.

Q. Well, you are connected with the Iron City plant, aren't you? A. Yes, sir.

Q. And you have been there how long?

A. Going on eleven years.

Q. And you in your answer to Mr. Grosvenor's question as to inspection naturally had in mind your experience in the Iron City plant, did you not? A. Yes.

Q. Now, the usual run of the kiln at your plant you sell it to the jobber, is that correct? A. Yes, sir.

Q. And he does the grading calling it first or second, or whatever he wants to call it? A. I don't know.

Q. But you sell it as it runs in the kiln to the jobber? 1
A. Yes, sir.
Q. That is correct? A. Yes, sir.

BY MR. CHRISTY:

Q. Did you say you have been eleven years at the Iron City plant? A. Yes, sir.
Q. Where were you before that? A. Chattanooga.
Q. Tennessee? A. Yes, sir.
Q. What kind of a dredge were they using there?
A. A hand dredge.
Q. You never used the power dredger before you went to the Iron City plant? A. No, sir. 2
Q. You never saw one before that time? A. No, sir.
Q. You say you are not using the power dredger at the Iron City now? A. No, sir.
Q. When did you use one?
A. We used one for about two years.
Q. About when was that?
A. Well, within three months ago.
Q. That is you used the power dredger until about three months ago? A. Yes.
Q. Then you changed to the hand dredge? A. Yes. 3
Q. That is right, is it? A. Yes, sir.
Q. Was that power dredger an Arrott dredger?
A. No, sir.
Q. Was it a pneumatic dredger? A. No, sir.
Q. Did it sieve the enamel through by rapping the dredger? A. No, sir.
Q. It did it by shaking? A. Yes, sir; a positive motion.
Q. Then you yourself never had any experience with a dredger that sifted the enamel through by rapping?
A. Yes, I saw one worked.
Q. You never had any experience with it?
A. We had one, yes. 4
Q. That is a pneumatic dredger? A. Yes, sir.
Q. How long did you use that?
A. Two or three weeks.
Q. That was only experimental? A. Yes, sir.
Q. So all your testimony here as to a power dredger means simply that shaking dredger which you used and described about three months ago, is that right? A. Yes.

1 By Mr. Noble:

Q. You said you were with the Standard Sanitary Manufacturing Company at one time? A. Yes.

Q. You were pattern maker there, were you not?

A. Yes, sir.

Q. You said you were with the Victor Company at Blairsville; what was your business there?

A. Superintendent.

Q. What of?

A. Of the whole plant, of the enameling ware department.

2 Q. You had charge of the workmen? A. Yes, sir.

Q. You had nothing to do with the enameling itself, but just general supervision? A. Yes, sir.

Q. What was your position at Muncie?

A. Pattern maker and foreman of the foundry.

Q. You had nothing to do with the enameling business there? A. No, sir.

Q. At Chattanooga, with the Cahill Iron Works, what was your position? A. Pattern maker.

Q. And up until six years ago you were employed in the foundry of the Iron City Works? A. Yes, sir.

3 Q. Since then you have been in general charge of the factory? A. Yes, sir.

Q. As superintendent of the men? A. Yes, sir.

Q. You have not done any enameling during that time?

A. A very little, not much.

Q. Your business has not been that? A. No, sir.

Q. Just an occasional piece, you may have tried?

A. Yes.

Q. How do you employ your men down there at the Iron City Works, Mr. Lose? The men who work in the enameling room, I mean? A. Piece workers.

4 Q. Have you or not many times taken learners down there who had been trained in other factories?

A. Not often.

Q. Do you recall any circumstances where men have applied for jobs who worked at other places? A. No.

Q. Do you recall instances where the men have left shortly after coming? A. No.

Q. Could you say that there have been such instances?

A. Not that I know of. I have known of them coming there and leaving. 1

Q. Do you employ the men down there or does the enameling foreman? A. The enameling foreman.

Q. You would not personally know about that question that I was asking about? A. Yes, I would.

Q. Well, you did not engage them yourself?

A. No, but I would know about it.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Mr. GROSVENOR: The Government's case is closed, with the understanding that after the Record has been completed by the stenographer we can have another meeting at which counsel may agree upon changes in the Record, and at which counsel for the Defendants may ask Mr. Wayman such further questions as seem advisable. 2

Adjourned.

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1 IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF MARYLAND.

THE UNITED STATES OF AMERICA

vs.

THE STANDARD SANITARY MANUFACTURING COMPANY, *et al.*

2 New York, N. Y., Post Office Bldg.,

May 8, 1911.

Pursuant to notice the taking of evidence on behalf of the Defendants, was resumed this eighth day of May, 1911, at the Post Office Building, New York, before C. John Beeuwkes, Special Examiner.

COUNSEL PRESENT:

EDWIN P. GROSVENOR, Esq.,
Special Assistant to the Attorney-General.
3 HERBERT NOBLE, Esq.,
HARTWELL P. HEATH, Esq.,
on behalf of the Standard Sanitary Manufacturing Company, *et al.*

EDWIN L. WAYMAN, a witness heretofore produced and sworn, recalled, as per stipulation of counsel, for further examination by Mr. Noble, testified as follows:

EXAMINATION BY MR. NOBLE (continued):

Q. Mr. Wayman, I have asked you heretofore some questions relative to the arrangements made by you, oral con-
4 tracts made by you, with Mr. Collins of Toledo, representing the National Supply Company. I call your attention to a letter, it being Petitioner's Exhibit No. 248, appearing in Volume 1 of the Record on pages 434 and 435, purporting to be a copy of a letter written by the Grosswiller Supply Company of Toledo, Ohio, to you, and particularly direct your attention to the sentence "The writer understands the National Supply Company of this City are getting goods from all the licensed manufacturers and Mr. Collins positively

declares upon his word of honor that he has not signed the contract of the licensors." The National Supply Company and Mr. Collins there referred to are the same persons that I have just asked you about, are they not? A. Yes, sir. 1

Q. What were the relations between you, as licensor, and Mr. Collins?

A. Well, on September 15, Mr. Collins agreed with me over the telephone that he would sell only licensed ware and that he would do everything provided in the license agreement except signing it, and he also asked me not to say anything about it to the other jobbers.

Q. So, while the statement is true that he had not signed the contract with you, you and he did have an oral contract? 2

A. Yes, sir.

Q. Embodying the terms of the license agreement and the jobber's license agreement? A. Absolutely.

Q. In Volume 1, pages 496 and 497, you were asked some questions relative to the schedules which formed part of the license agreement between you and the licensed manufacturers, and you recited in your answer various discounts and other details and instruments which were attached and then on page 497 you were asked, "Was there anything else attached to that license agreement other than this jobber's agreement?" To which you replied, "No, not that I know of." Now, I would like you to explain more fully what you meant by your answer which I have just read? 3

A. Well, the question came up as to what the prices were, and I explained the general outline as to how they were being fixed and called attention to the fact that there were a great many figures, and that when those prices were completed they were to be considered part of the agreement; they were attached to the agreement at that time.

Q. Then, there were attached to the license agreements sent to the various manufacturers what papers, in each instance? 4

A. The jobber's license agreement, with the notation thereon showing how the prices were being figured in the schedules that I was getting up.

Q. So that that included the differentials and also the price sheets to which you have referred, is that correct?

A. Yes, yes.

Q. There were thirty-odd thousand calculations, were there not, which had not all been completed at that time?

A. Well, that is approximately what I estimated. I presume there were more than that.

Q. I show you now Petitioner's Exhibit No. 287, it being a letter dated August 25, 1909, and marked "Copy," and addressed "Dear Sir," with a blank space left for the signature and the word "Commissioner" under it, and I ask you whether that letter had anything to do with the licenses which you subsequently granted to the various manufacturers, or with any of your efforts to procure the options upon the patents upon which you later granted licenses?

A. No, sir.

Q. Had the letter anything to do with the plans which you later put into operation? A. No, sir.

Q. Or your efforts to bring about the accepting of licenses from you by the manufacturers of sanitary enameled iron ware? A. No, sir.

Q. I now call your attention to Petitioner's Exhibit No. 288, it being a letter upon the letterhead of the Sanitary Enameled Ware Association, dated December 18, 1909, and addressed to Mr. J. A. Kelly, and signed by E. L. Wayman, Commissioner. It is headed "Special Meeting." Did that letter have relationship to licenses later granted upon the Arrott and other patents to the various manufacturers?

A. No, it did not.

Q. Or to any negotiations or efforts that you were making to get options on those patents and later grant licenses?

A. No, sir.

Q. You say in the first paragraph that certain market conditions have remained unchanged and that it is deemed advisable to call a special meeting for Wednesday, the twenty-second, "in order that closer working arrangements than have existed in the past may be discussed." What were the "closer working arangements" there referred to?

A. Well, it had to do with costs. I had been considering having a cost expert, because of the discrepancies between the various manufacturers as to costs, to come and give a talk on costs. I remember, in particular, the next day after the meeting of December 1st, talking at lunch with Mr. Guthrie of the Clymer Manufacturing Company, and Mr. Kelly of the Iron City Manufacturing Company and going into the question of costs very thoroughly—

Q. (Interrupting): You mean the manufacturing costs?

A. Yes, sir.

Q. That was one of the subjects discussed at one of the meetings? A. Yes, sir. 1

Q. And you had been looking into the question, you say?

A. Yes, sir.

Q. And had been contemplating having a cost expert come there and give a talk on costs?

A. A general talk on costs, yes, sir.

Q. Did that have anything to do with the license agreements you were working on? A. No, sir.

Q. You had not obtained the option on the Arrott patent, had you? A. No, sir.

Q. Now, you say "It is highly important that you attend this meeting and assist in some action that will tend to maintain the market"; did the meeting which was called ever take place? A. No, sir. 2

Q. Was there any discussion between the persons to whom you sent this letter as to closer arrangements or the maintaining of the market? A. Not that I know of.

Q. Did any of the matters referred to in this letter have anything to do with your getting options on the Arrott and other patents or your license agreement? A. No, sir.

Q. I now call your attention to Petitioner's Exhibit No. 289, it being a paper dated January 18, 1910, not addressed to anyone, but with a blank space for a signature, and under it the word "Commissioner," in which it is said: "Some of the manufacturers report that business is exceptionally dull and inquire if market prices are being maintained." What is meant there by "market prices"? Is that the prices of the several manufacturers? 3

A. Well; general prices; there were no definite prices, but there were published prices.

Q. Was there any agreement between the manufacturers as to what were market prices? A. No, sir.

Q. In other yords, that means whatever the manufacturers could get? A. Yes, sir. 4

Q. Without reference to any other manufacturers?

A. Yes, sir.

Q. It is said here: "This situation is true generally due to the bad weather existing and the taking of inventories by the jobbers. If your Company is experiencing a slack condition at this time, I trust you will not try to stimulate the volume of your business by any weakening in prices but await the natural order of things. * * * " Now, did

1 that letter have anything to do with your plans to give licenses? A. No, sir.

Q. Or anything to do with your procuring of these options? A. No, sir.

Q. It was written to the manufacturers to get general expressions of opinion as to market conditions, is that correct? A. That is it exactly.

Q. And did you get replies from various manufacturers as to that? A. Yes.

Q. And when you got those replies, did you embody them in a letter which you sent out to the members of the Associa-

2 tion? A. Yes, sir.

Q. I now show you Petitioner's Exhibit No. 290, it being a letter dated January 22, 1910, and headed "Market Conditions," and I ask you if that is as nearly as you remember the letter which you sent out to the members of the Sanitary Enameled Ware Association? A. Yes.

Q. Had that letter anything to do with the licenses which you granted the manufacturers of sanitary enameled iron ware under the Arrott and other patents? A. No, sir.

Q. Or with your efforts to bring about those licenses? A. No, sir.

3 Q. I observe that this letter contains various quoted paragraphs commencing "We are no doubt passing through the dullest period of the year so far as enameled ware is concerned, but we believe we are going to have a good demand a little later." Then another paragraph beginning "We see no reason why any manufacturers should cut prices at this time, as the market will no doubt right itself in the near future, when everybody will have all the trade they can handle in this line." And another paragraph beginning "Our order sheets for the present year and for the last few weeks of the last year, especially on small ware, have been very unsatisfactory, particularly so during January. The

4 year, however, is young and we are not at all uneasy * * *." Then another paragraph, "Business is very dull. We have had a most remarkable falling off in business within the last thirty days." Then another paragraph saying, "We are not hearing of any cutting of prices only as reflected by the prices that some of the jobbers are making." Then another paragraph, "Your letter of January 18th regarding the state of the market and advising that several of the manu-

facturers report business unusually dull, received." What are those various quoted paragraphs? 1

A. Those are extracts from letters that I received in reply to my circular letter of January 18, asking with reference to the market conditions.

Q. And you sent those out to advise the various members of the Associations what you heard from the other members?

A. Yes, sir.

Q. To keep them advised of market conditions?

A. Yes, sir.

Q. Did that have anything to do with the efforts you were making with respect to licenses under the Arrott and other patents? 2

A. No, sir; it was simply in the natural order of business.

Q. Now, I call your attention to Petitioner's Exhibit No. 292, it being a letter dated April 27, 1910, and addressed to Mr. J. A. Kelly, and signed by E. L. Wayman, and upon the letterhead of E. L. Wayman. In this letter you were talking about the Niagara Falls meeting of jobbers and in the last sentence you say: "I was made to feel that the manufacturers are pursuing the only and proper course" Had you told the jobbers at that Niagara Falls meeting what plan you had proposed to the manufacturers? 3

A. Yes, I went into the matter fully with them. I told them that the manufacturers were going to enter into these license agreements with me and I explained the details of the jobber's license agreement, also explained that seconds were going to be eliminated from the market and went into the matter in general.

Q. And told them that the manufacturers were going to take licenses from you? A. Yes, sir.

Q. What did you mean by these words: "I was made to feel that the manufacturers are pursuing the only and proper course?"

A. Simply that that was the only and proper course to take. 4

Q. That the jobbers felt that was the only wise thing for them to do, is that what you mean? A. Yes, sir.

Q. Now, I call your attention to Petitioner's Exhibit No. 293, it being a letter dated February 2, 1910, addressed to Mr. J. W. Conchar, 41 Park Row, New York City, and I ask you to read it.

The witness then did as requested.

1 Q. As I understand, this letter was written in reply to a letter from him which you testified to in response to Mr. Grosvenor's questions, is that correct? A. Yes, sir.

Q. I call your attention to these words: "The manufacturers wish to advise you that they are now trying to work out the scheme of resale prices, and at the meeting yesterday, considerable progress was made in this direction." Will you please tell me what your purpose was in writing that?

A. I was anxious to give the jobbers the impression that the plans I presented at the meeting, after the regular meeting of the Association on February 1, was meeting with some
2 encouragement. The letter was addressed to me, I believe, as Commissioner of the Sanitary Enameled Ware Association, and during the meeting of the Association I simply read the letter and said that it referred to a subject in general which I wished to talk to them about after the regular meeting, and Mr. Kohler was in the chair and said, "Well, I don't know what we can tell them," so I said that I would write to them.

Q. Well, did you mean by this that the manufacturers were working out the scheme, or that you were working out a scheme to present to the manufacturers?

3 A. Yes, that is what I meant exactly.

Q. What did you mean?

A. That the scheme that I had presented at the meeting which was held after the regular meeting of the Association, was meeting with some encouragement.

Q. You mean that the manufacturers wished to advise you for your own purposes? A. Yes, sir.

Q. Is that what you meant to say?

A. Yes, sir; absolutely.

Q. Then you say again in the next sentence, "The manufacturers believe that the plans they have in view, while they
4 may not embrace all of the requests that have been made by your Association, will be of such scope, that they will be able to provide for reasonable profits to the jobber, thereby making enameled ware more desirable to handle than in the past." What plans does that refer to?

A. To the plans which I presented after the regular meeting.

Q. And which you later embodied in the license agreement? A. Yes, sir.

Q. They were your plans and not the manufacturers' plans? A. They were my plans altogether. 1

Q. And you were merely using the name of the manufacturers in your reply, is that the idea? A. Yes, sir.

Q. You say "the manufacturers will be pleased to meet your Committee just as soon as their own plans are in a more concrete form, and believe this will be the case in the near future." The plans you there referred to were what?

A. The same plans, which I presented to them after the regular meeting.

Q. And those were the plans which you had been presenting to them from time to time in going around to their various places of business? A. Yes, sir. 2

Q. Did the manufacturers ask you to write this letter in its present form?

A. No, sir; they had nothing to do with it.

Q. Did the manufacturers have any plans? A. No, sir.

Q. Now, Mr. Wayman, I call your attention to Petitioner's Exhibit No. 294 and ask you what that resolution which says, "No seconds in small ware to be sold in the United States" means?

A. That was a resolution passed in October, 1909, I think it was.

3

Q. That was a stock resolution, was it?

A. Yes, sir; it had nothing to do with the license arrangement whatever.

Q. Did that resolution go into effect actually among the manufacturers? A. Not entirely so, no.

Q. Did it have anything at all to do with your efforts to bring about the acceptance of licenses from you under the Arrott and the other patents?

A. No, it simply was a reinstatement of a resolution which had existed in the former organization.

Q. In your license agreement which you later presented you did have a provision with reference to seconds? 4

A. Yes, sir.

Q. What was that?

A. The license agreement between the manufacturers and myself provided that no seconds should be sold, and it also provided that the goods should be boxed and crated—

Q. And your purpose for putting that provision as to seconds in the license agreement was what?

A. To prevent their sale.

1 Q. There is also this statement in the bulletin: "Lavatories, roll rim sinks and other small ware will be crated and boxed. No orders accepted for goods nested except flat rim sinks. No claims whatever will be allowed for damages to enameled kitchen sinks when same are shipped nested." What was that?

A. That was the resolution adopted by the Association and had nothing to do with the license agreements whatever.

Q. Was this rule, here adopted, that lavatories, roll rim sinks and other small ware should be crated and boxed carried into effect? A. No.

2 Q. When you gave these licenses to the various manufacturers, you had a provision providing for this crating and boxing, did you not? A. Yes, sir.

Q. What was the purpose of that?

A. To insure the safe delivery of the enameled ware.

Q. Mr. Grosvenor asked you whether, upon December 28, when you got the option from Mr. Dawes upon the Arrott patent, the exact price which you were to pay was fixed; now I ask you was a method agreed upon for determining the price?

A. Yes, if I took an exclusive license with the right to

3 fix the terms and conditions, it was agreed that the royalty should be low enough so that I could make a fair profit above cost of administration. In case I purchased the patent, we agreed to pay the cost they had paid Arrott for the patent together with the cost of litigation as a basis for figuring out the cost per year, allowing them, of course, a reasonable profit above what it cost them, but the definite price was not agreed on at the time.

Q. You mean the exact dollars and cents? A. Yes, sir.

Q. But the method was arranged? A Yes, sir.

Q. When did you begin your exploitation of and your

4 efforts to secure licenses, with regard to this Arrott patent?

A. After I got the option on the Arrott patent, the 30th and 31st of December, 1909.

Q. Mr. Wayman, I now call your attention to a letter dated May 31, 1910, on the letterhead of E. L. Wayman, and signed by you as Licensor and addressed to Mr. F. J. Torrance, and I ask you what that letter is?

A. That is a notice to Mr. Torrance asking him to make arrangement to keep a record of his furnaces in operation, beginning June 1.

Q. Was that letter sent to other persons other than Mr. Torrance? A. Yes, it was sent to all the licensees. 1

Q. The letter to which I refer reads: "Dear Sir:—Beginning tomorrow, will you kindly keep a record of your furnaces in operation? The latter part of the week I will send you printed forms to keep these records on, which are to be forwarded to me monthly. Yours very truly, E. L. Wayman, Licensor." Now, was that letter sent to each of the companies to which you granted a license? A. Yes, sir.

Q. I observe that on the specific copy which I have before me there is a notation "Copy sent to Mr. Ahrens, Louisville, and Mr. Dawes, Pittsburgh." In whose handwriting is that? 2
A. That is mine.

Q. So, in notifying the Standard Sanitary Manufacturing Company, you notified Mr. Ahrens, Mr. Torrance, and Mr. Dawes; is that correct? A. Yes, sir.

Mr. NOBLE: I offer that in evidence as Defendants' Exhibit No. 28.

Letter referred to was then marked and filed as "Defendants' Exhibit No. 28."

Q. Does Mr. Dawes have charge of the manufacturing business of the Standard Sanitary Manufacturing Company around Pittsburgh? A. Yes, sir. 3

Q. Of what plant?

A. The Allegheny and New Brighton plants, as well as the Louisville plant; he is the general manager of plants.

Q. And Mr. Ahrens is the President of the Company, making his headquarters at Louisville? A. Yes, sir.

Q. I now show you a letter upon the letterhead of Edwin L. Wayman, with a blank space for the signature and the word "Licensor" under it, dated June 13, 1910, and I ask you what that is?

A. That is a circular letter which I sent to the licensees. 4

Mr. NOBLE: I offer that in evidence as Defendants' Exhibit No. 29.

Letter referred to was then marked and filed as "Defendants' Exhibit No. 29."

Q. Will you read it aloud?

A. (Reading): "June 13, 1910. To the Licensees: In order that there may be no misunderstanding, I wish to advise you that it is not the intention to confine the execution

of the jobber's license agreements to the list of names in the Blue List. All firms, that do a jobbing business, are entitled to buy goods provided the individual manufacturers desire to sell them, if they will execute this contract. Yours very truly ————————, Licensor."

Q. This was official notice by you to the manufacturers that anybody who did a jobbing business, whether his name appeared in what is called the "Blue Book," or no, was, so far as you were concerned, free to make contracts with you or your licensees relative to the ware manufactured under your patents? Is that correct?

A. Yes, sir; and in addition to that it is a reiteration of the statement made to the licensees in New York on May 6th.

Q. That was the date on which a large number of them accepted licenses from you, is that correct? A. Yes, sir.

Q. I believe it is a fact that there are a great many jobbers who did accept contracts whose names do not appear in the Blue Book. Is that correct?

A. Yes, sir; that is correct.

Mr. NOBLE: That is all.

Mr. GROSVENOR: I have no questions; that is all for us.

Examination concluded and signing of deposition waived by agreement of counsel for the respective parties.

Mr. NOBLE: Counsel for the Defendants desires to renew the notice which he has heretofore given as to the motion to enlarge the time for the Defendants to take their testimony, which he will make before the Court at Richmond on final hearing, on June 15 and 16, 1911. Counsel for Defendants has not closed his case, and under the circumstances heretofore stated in the Record is unable at this time to close his case. Counsel waives no right to take further testimony upon the issues here involved.

Adjourned.

DEFENDANTS' EXHIBIT No. 1. 1

Consisting of Pencil Notes on this Sheet.

Filed Nov. 4, 1910.

1. Patents to be assigned to Licensor.
2. Schedules of Ware under License. [*Entire line.]
3. Amount of Royalty. [Proportioned as at present.]
4. Amount of Forfeit. [Proportioned to size.]
5. Prices to be established by? [Executive Com.]
6. Resale Price List—Discount to Jobbers. [15% over cost.]
7. Rebates to Jobbers for maintaining Resale Prices. 2 [10%.]
8. Length of Rebate Periods. [Not less than 3 mo.] [Price on which Rebate applies.]
9. Agreements to become effective and no Future Delivery Orders [Quarterly.] to be recognized beyond that date.
10. Contract Forms between Licensor and Manufacturers.
11. Differentials between Manufacturers. [Not more than 2½%.]
12. Contract Forms between Manufacturers and Jobbers. [Can penalties be enforced.] 3
[Central Selling Co.]
[Policing.]
[Direct shipments % extra.]
[Territories divided.]

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* Printed matter in brackets Defendants' Exhibit.

4

1 **DEFENDANTS' EXHIBIT No. 2.**

Filed Nov. 4, 1910.

J. M. KOHLER SONS CO.

June 20th, '10.

Mr. Edwin L. Wayman,
1509 Arrott Bldg.,
Pittsburg, Pa.

Dear Sir:—

2 We have yours of June 17th requiring return of correspondence between your office and ours, which you had forwarded to us, and regret to have to advise that this correspondence was promptly destroyed upon its receipt.

We trust you have not been inconvenienced thereby, and remain,

Very truly yours,
J. M. KOHLER SONS CO.,
per WALTER J. KOHLER,
Pres.

WJK-W

3 **DEFENDANTS' EXHIBIT No. 3.**

Filed Nov. 4, 1910.

(Consisting of long-hand notes here on Petitioner's Exhibit No. 143.)

Preliminary proposed plans—has no date or our receiving stamp mark. Evidently the first proposed—Not used—Referred to in our letter to U. S. Attorney General dated 6/28/10.

4

CHARTS

TOO

LARGE

FOR

FILMING

DEFENDANTS' EXHIBIT No. 10.

Certified copy of U. S. Letters Patent No. 633,941, issued to James W. Arrott, Jr., for dredger for pulverulent material. (Not printed.)

DEFENDANTS' EXHIBIT No. 11.

Filed April 19, 1911.

UNITED STATES CIRCUIT COURT, FOR THE DISTRICT OF NEW JERSEY.

STANDARD SANITARY MANUFACTURING COMPANY,

v.

J. L. MOTT IRON WORKS,

In Equity.

George R. Beach, and
Christy and Christy, solicitors and
Marshall A. Christy, and
George H. Christy, of Counsel for Complainant, and

W. P. Preble, Jr., Solicitor and of Counsel for Defendant.

OPINION.

CROSS, District Judge. The bill of complaint charges the defendant with infringing a patent issued to one James W. Arrott, Jr., dated September 26, 1899, known as No. 633,941, and which by assignment subsequently became, and is now, the property of the complainant. The device covered by the patent is a "Dredger for Pulverulent Material," and the patentee in describing it says, "this invention has relation to articles used for sifting and distributing powdered enameling material on the surface of bath-tubs and other vessels commonly known to the trade as 'dredgers.'" The answer sets up the invalidity of the patent for want of novelty and invention, and also denies infringement. There are three claims in the patent, all of which it is contended have been infringed; they are as follows:

1 1. "A dredger or sifter consisting of a screen or sieve and a supporting-handle, in combination with a pneumatic agitator attached to the dredger and adapted to vibrate the sieve substantially as described."

2. "A dredger or sifter consisting of a sieve and a handle in combination with an automatic agitator secured to and carried by the dredger and adapted to agitate or vibrate the same, substantially as described."

2 3. "A dredger or sifter comprising a sieve and handle and an automatic agitator secured thereto with means for controlling the operation of said agitator, substantially as described."

This patent was before the Circuit Court for the Western District of Pennsylvania, in cross suits between the patentee and the present complainant, and was therein adjudged to be good and valid in law. It appears from the opinion of Judge Acheson, that an alleged prior use of the patented article was considered by him, and disallowed; however, he
3 states that the patentability of the improvement was not denied (131 Fed. 457). The decrees entered in those suits were subsequently affirmed by the Circuit Court of Appeals for the Third Circuit (35 Fed. 750). As already indicated, the dredger is used for distributing powdered enamel over cast-iron sanitary ware, while the ware is heated to a red heat. The process may be briefly described as follows:—After the casting has been prepared for the enameling, a first coat commonly called "slush or base" is applied to the article in liquid form; after this coating has dried, the article is placed in the enameling furnace until the same is burned or
4 fused into the iron, and the casting itself has been raised to a bright red heat; when thus heated, the article, generally a bath-tub, is withdrawn from the furnace and placed in a holder or cradle resting upon a table, and the powdered enamel dusted by a dredger over the hot surface of the tub as evenly as possible, until the tub has cooled to such a degree that it will not readily hold the enamel, whereupon it is reheated, whereby the enamel deposited thereon is fused into a uniform homogeneous layer; the reheated tub is then withdrawn from the furnace and given a second coat of the

powdered enamel, and this operation is repeated as often as 1
is necessary to obtain a smooth and even coating of the enamel. While the casting is resting upon the holder or cradle, it is turned from time to time in different directions and at different angles in order that the powdered enamel may fall as nearly as may be at right angles to that portion of the surface upon which it is then being distributed. The enamel as used is an extremely fine powder, like ordinary flour in that respect, although considerably heavier. In order that the enameling operation should be completely successful, the powder must be distributed evenly and uniformly over the surface of the tub, and it must be applied as speedily 2
as possible, since the powder will not adhere to the casting when its temperature is lowered beyond a certain degree. Unless the enamel has been evenly distributed over the article, its surface when finished will have a lumpy or wavy appearance, which, if glaring, renders the article worthless, and if barely apparent, makes it what is called a "second", and an article of that grade is of considerably diminished value. In order to produce an even coating of the enamel, there must be uniformity and continuity in the flow of the powdered enamel, and under these conditions all that the operator has to do to insure success, is to move the dredger 3
over the surface to be covered at a uniform rate of movement. On the contrary, when the flow of the enamel from the dredger is not uniform or continuous, an even distribution of the enamel is rendered much more difficult, if not impossible. The condition of the prior art and the object which the inventor by his patent sought to attain, will be stated in his own language.

> "The ordinary dredger consists simply of a sieve or other screen of proper mesh having a handle of convenient length by which it is held and manipulated. As the pulverulent material does not freely pass 4
> through the sieve or evenly distribute itself spontaneously, it is necessary in dredging to continually agitate the dredger with the hand or with some instrument held in the hand by tapping or striking the dredger or by striking the dredger against the edge of the article to be enameled. This renders the labor of dredging or sifting very tiresome and slow and requires considerable skill in manipulating the dredger

so as to insure an even delivery of the enameling material."

"The object of this invention is to provide an automatic tapper or agitator which will deliver a succession of rapid blows against the side or end of the dredger and while relieving the workman of a great deal of labor causes the pulverulent material or powder to be evenly distributed and to be uniformly discharged. The device which I employ for this purpose is preferably a pneumatic hammer, the piston or plunger of which is elongated and fitted to the hollow handle of the dredger, so as to reciprocate within the latter and strike the end or side of the dredger with every forward stroke."

The hand-dredger of the prior art, consisted of an ordinary tin cup or measure, holding ten or twelve pounds of the powdered enamel, and having a fine meshed sieve-bottom, a wooden handle four or five feet long attached to the cup or measure, and a detached beater. The handle of the dredge was ordinarily grasped by the workman with his left hand, the end of the handle projecting back under his elbow for support, and while the dredge was thus supported, it was moved around over the surface of the article to be enameled and its handle constantly beaten above and below by a beater held and operated by the right hand of the workman. This was obviously a somewhat crude and certainly a laborious operation, and it was necessarily performed in immediate proximity to a red hot tub. Speaking of the labor involved in the use of a hand tapped dredger, complainant's manager says:

"The operation of handling a hand-tapping dredge is not only difficult but laborious, and before a man could become expert in his work, he was compelled to master the knack of depositing the enamel evenly upon the surface of the casting. It was always necessary to not only have a man of good judgment, but a man of physical strength. The constant tapping, and standing in front of a hot casting at the same time, was very exhausting. During the summer months it was almost an impossibility to keep the furnaces fully manned, by reason of the men becoming exhausted at

their work, largely on account of the labor connected with the applying of the enamel to the casting." 1

Another witness, a practical enameler says:

"This operation of holding the dredge with one hand and rapping with the other was very hard labor. Continuous rapping with one hand for a certain length of time cramped your arm so that you could not rap any further or proceed with enameling."

The disadvantages and labor of this method were so apparent that the complainant's witnesses testify that considerable effort had been made to overcome them. By the pneumatic method of the patent in suit, what was before laborious, slow and uncertain, has been rendered comparatively easy, rapid and successful; the testimony shows that the operation of enameling bath-tubs under this patent, has been so accelerated that whereas by the hand-beater a workman could enamel but a single tub an hour, he can now enamel from two and a half to four tubs an hour. The pneumatic hammer strikes several thousand graded and uniform taps a minute, and the blows are communicated by a rod from the hammer through the hollow handle of the dredger to the sieve-bottom of the vessel holding the enamel, without agitating to any appreciable extent the handle itself, thus maintaining an even and constant flow of the powder. In its use the workman has both hands free to support the dredger and can move it quietly and quickly over the article being enameled, without any disturbing jar, from the motion of his arm in striking or from the blows struck by him, which was unavoidable under the old method. The testimony clearly shows that by the pneumatic method the powdered enamel flows evenly and continuously from its receptacle, while by the hand-method it is discharged in varying volume by intermittent puffs. 2 3 4

It seems to me that the prior art requires very little attention. It is true that pneumatic hammers were used for certain purposes prior to the complainant's patent, but they were not used in the art under consideration, or indeed, in any analogous art. The Boyer Patent No. 575,589, is one of this class, but is so far removed from the patent under discussion, as not to require serious consideration. Hammers of that character were used for heading rivets, cutting

1 stone and work of like character. The Hyde Patent No. 91,849 is for a Pneumatic Dental Plugger, and of this nothing more need be said. The Babbitt Patent No. 454,149 is used for embossing work in sheet metal. Many other patents are cited, but the idea of the patent in suit is entirely foreign to each of them; they were mostly designed for screening sand, coal, ashes, grain, bran and other like materials. Their purpose was to separate larger particles from smaller, and in their operation the screen moves speedily back and forth or peripherally, and the substance screened is by its own weight caused to slide back and forth over the surface of the screen
2 whereby the finer particles are dropped through, and the coarser are retained or distributed apart from the finer. There is nothing in any of them which would be at all likely to suggest what Arrott accomplished; they are in a different art, of different construction and used for entirely different purposes. His idea was the use of a pneumatic or automatic agitator attached to the dredger and adapted to vibrate the sieve through a hollow handle. As already stated, all of the appliances known to the art prior to his patent, were hand-vibrators of some sort. None of them approximated or claimed to approximate what Arrott did, and their considera-
3 tion would be unprofitable. It is true all of the elements in his patent are old, but they are combined in a new way to produce a new and useful result. By it the hand-beater has been eliminated, and with it, to a great extent, the personal equation. His invention is useful, successful and economical, and in my judgment discloses novelty and invention; although simple it was not obvious.

The defendant, however, alleges that the patent is invalid because of the prior use of an unpatented pneumatic device of a like character to accomplish the same purpose. In support of this contention, considerable evidence has been pro-
4 duced from which it appears that a few bath-tubs were enameled with some degree of success, by the defendant in the fall of 1896, by a device in some respects similar to that defined in the complainant's patent; but I think that the evidence considered as a whole, discloses nothing more than an abandoned experiment. The device, there was but one, was in operation, so the workmen who used it say, off and on for about a week or ten days, although one or two other witnesses intimate that it was used for a somewhat longer period. It was then unquestionably dismantled and was not

again used, nor was anything like it used for several years afterwards, and not until after the defendant had removed its works from Mott Haven, N. Y., to Trenton, N. J. In attempting to describe the apparatus, two of the witnesses say that the pneumatic hammer was placed *under* the outer end of the handle; one that it was at the *sieve end*, right up against the sieve, and still another that it was at about the *middle* of the length of the handle and on *top* thereof. The uncertainties and discrepancies of their testimony, is apparent, and it can only be reconciled upon the theory that the hammer was being changed hourly or daily from one position to another, which tends strongly to show that the device was purely experimental. Furthermore, it probably was a failure. It certainly was used but a very short time, and was then abandoned. The superintendent of the defendant gives as a reason for such abandonment, insufficiency of the boiler capacity of the plant to furnish the requisite power over and above what was required for other purposes, and being asked what the boiler capacity of the plant was, said that it was sixty horse power; the engineer of the defendant, however, being asked the same question, said that it was one hundred and twenty horse power; this would seem to dispose of the reason for abandonment alleged by the superintendent. The only other reason for its abandonment, and this by a different witness, was that the alleged inventor left the defendant's factory and employment; this reason, is as improbable as the other, since the testimony shows that the device, whatever it was, was used in November 1896, whereas its inventor did not leave the factory until May 11, 1897. Furthermore, workmen who used the device say that they made more money by the old way of enameling; that the new method was not fast enough; that they used it because they were ordered to; that it did not distribute the enamel any better or any faster, nor was it any easier to move around over the tub, and that the old hand method of Leffert's patent dredger did just as good work and was just as easy to handle. The alleged device was not produced, nor was any part of it, unless it be the pneumatic hammer. While the testimony was being taken, the workmen who mainly used the device, were shown a pneumatic hammer which they said they recognized as the one used in November 1896; one of them when asked how he identified it, answered, "by its make up, and where the rod enters, and size of valve used for the air to let the air into

the tool," and the other unhesitatingly recognized it by its number which was "3817 C.C." The first witness does not pretend that the characteristics which he describes, and by which he claimed to identify the hammer, were in any wise peculiar to that particular hammer; while the second, who admitted that he made no memorandum of the number, nevertheless claimed to remember it by its number after the lapse of ten years. The prodigious feat of memory involved in this identification is apparent and requires no comment. To my mind, however, it trenches so far on the improbable as to greatly effect the credibility of the testimony. There is one other matter in this connection which requires mention. The man who is alleged to have invented the pneumatic dredger used by the defendant in 1896, was one Harry Lefferts; his father Leffert Lefferts, was a witness in the case; he was formerly, and for about twenty-five years, a superintendent of the defendant's plant, but left the company's employment in May 1896. His testimony in this case was given last October, and upon being asked the present address of his son, replied, "I have received no communication from him for the last seven or eight months. Do not know where he is at present, but suppose that he is at his old address at No. 8 Gould Street, San Francisco." And upon cross-examination added that when he last heard from him he was in the employment of the Southern Pacific Construction Company. He of all others was apparently the one who could have told the most about the construction and operation of the device alleged to have been in use in 1896; he was the superintendent of the defendant's enameling department at the time, and the alleged inventor of the device. He is not produced, however, nor is any evidence offered to show that he could not have been. His absence is entirely unaccounted for, although his address was presumably known. I think this circumstance very strongly militates against the defence of prior use. In the case of Simmons, et al. v. Standard Oil Co., et al. 62 Fed. 928, Judge Coxe, at page 930, commenting upon the absence of a witness under somewhat similar circumstances, said, "The complainants have introduced a mass of testimony to show that Glankler conceived the invention in the autumn of 1888, months prior to the alleged use at Cincinnati and Chicago. This testimony, notwithstanding numerous contradictions and discrepancies, is upon the whole, so full and circumstantial, that it would be accepted as conclusive, were

it not for the fact that Glankler himself failed to appear as a witness. No sufficient reason is given for his nonappearance. It was apparently without excuse and leaves room to doubt the accuracy of the complainants' dates and the correctness of their conclusions. No matter from what point of view the question is approached, there is always the suspicion that if Glankler could have corroborated this testimony, he would have done so." In the present case Leffert's testimony was so important, and its unexplained absence so suspicious, that I think Judge Coxe's remarks are eminently pertinent and applicable. If the witness could not have been found, that fact could have been easily shown, but if found, his testimony would in all probability have been more illuminative of the point under consideration, than the combined testimony of all the other witnesses. His absence unaccounted for, is suspicious, and opens the entire defence of prior use to suspicion. The rule of law applicable to the defence of prior use, is well settled and renders any extensive citation of authorities unnecessary. It may be found laid down in Coffin v. Ogden, 18 Wall. 120, 124, and The Barbed Wire Patent Case, 143 U. S. 275, 285. In the case at bar, the testimony is unsupported by any patents, drawings or exhibits, and a case thus made is always open to grave suspicion. In Deering v. Winona Harvester Works, 155 U. S., 286, 300, Mr. Justice Brown, says "Oral testimony unsupported by patents or exhibits, tending to show prior use of a device, regularly patented, is in the nature of the case open to grave suspicion." He then cites The Barbed Wire Patent Case, and adds considerable matter pertinent to the case at bar, but which it is unnecessary to quote. I think the prior use which has been set up as a defence, was experimental, as indeed, some of the defendant's witnesses called it, and the general superintendent of the defendant's plant, near the close of his testimony plainly admits that after the workmen who used the machine, had abandoned its use, Leffert's, its inventor, was still working at it. There is one other circumstance in this connection which should be alluded to. After the abandonment by the defendant, of the single article used in the fall of 1896, it does not pretend that it again used a pneumatic dredger until about December 1, 1905. Shortly prior to this latter date, it had bought several thousand of enameled bath-tubs of the complainant, and in the course of these transactions its superintendent frequently visited the

1 complainant's works and had ample opportunity to, and did in fact, as he admits observe the operations of their plant, and became "very familiar" with the operation of their pneumatic dredger, although this, as he says, was not the object of his visits. Not long thereafter, however, the defendant adopted and put into general use in its factory, the alleged infringing devices.

Upon the question of infringement, there is little to be said. The defendant has adopted the complainant's device and used it. In its use, however, it partially supports the weight of the pneumatic dredger by a chain attached to and
2 suspended from the ceiling of the factory. This perhaps makes it easier for the operator, but does not in any way alter the character of the device or its method of operation. The defendant claims, however, that this support by a chain affixed to the ceiling, makes the device stationary, and that since Arrott, the patentee of complainant's device disclaimed its application to stationary apparatus, the defendant does not infringe. What the patentee said, and all that he said, in this connection was, "I am aware that jarring or vibrating devices have been used in stationary apparatus used for sifting material"; it is quite evident to what he there refers;
3 that the defendant's infringing device was not a stationary apparatus within the terms of this disclaimer, is apparent. The dredger was merely supported or partially supported by a cord or rope to take some of its weight from the workman; it was not however, stationary in any proper sense of the word; it was moveable and had, while in use, to be moved constantly back and forth over the ware which was being enameled, exactly as it would have been if unsupported. This support was of the same character as that afforded by a strap over the neck or shoulder of the operator as disclosed in the hand-beater dredger, in the prior art.

4 The complainant is entitled to a decree of the usual form in like case, with costs.

JOSEPH CROSS,
Judge.

UNITED STATES OF AMERICA,
District of New Jersey, } *ss.*

I, Henry D. Oliphant, Clerk of the Circuit Court of the United States of America, for the District of New Jersey, in the Third Circuit, do hereby certify the foregoing to be a

true copy of the original Opinion, on file, and now remaining among the records of the said Court, in my office. 1

In Testimony Whereof, I have hereunto subscribed my name and affixed the Seal of the said Court, [SEAL.] at Trenton, in said District, this Fifteenth day of February, nineteen hundred and eleven.

H. D. OLIPHANT,
Clerk Circuit Court, U. S.

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DEFENDANTS' EXHIBIT No. 12.

Filed April 19, 1911.

CIRCUIT COURT OF THE UNITED STATES,
DISTRICT OF NEW JERSEY.

STANDARD SANITARY MANUFACTURING COMPANY vs. J. L. MOTT IRON WORKS.	In Equity. No. 40, March Term, 1906.

2

Decree.

And now, to wit, May 13, 1907, this cause having come on for final hearing upon the bill of complaint, answer, replications, and proofs taken on behalf of both parties, and the Court having heard arguments of counsel for both parties, and having considered the same, it is ORDERED, ADJUDGED and DECREED as follows:

First: That the Letters Patent of the United States here in suit, No. 633,941, for Dredger for Pulverulent Material, granted on September 26th, 1899, to James W. Arrott, Junior, are in all respects good and valid in law; that the complainant herein, Standard Sanitary Manufacturing Company, is the true and lawful owner of the said Letters Patent; and that the defendant, J. L. Mott Iron Works, has infringed upon the said Letters Patent in respect of each and all of the claims thereof, and upon the exclusive rights of the said complainant thereunder;

3

Second: That an injunction be issued out of and under the seal of this Court against the said defendant, J. L. Mott Iron Works, perpetually enjoining and restraining the said defendant, its successors and assigns, and each and all of its officers, servants, agents, attorneys, employees, and workmen, and every person acting for or on behalf of the said defendant, its successors and assigns, from any construction, sale or use, in any manner, of any dredger or dredgers containing or embodying the invention covered by the said Letters Patent, in violation of the rights of the said complainant, as prayed for in the bill of complaint herein;

4

Third: That the said complainant do recover from the said defendant the profits which the said defendant has re-

ceived or made, or which have accrued to it, from its in- 1
fringement of the said Letters patent, and that the said complainant do also recover from the said defendant the damages which it, the said complainant, has sustained by reason of said infringement;

Fourth: That it be referred to Henry D. Oliphant, Esquire, of Trenton, N. J., as Master, to ascertain, take and state an account of the profits which the said defendant has received or made, or which have accrued to it, from its said infringement, and to assess the damages sustained by the said complainant by reason of said infringement, and to report the same to this Court with all convenient speed; 2

Fifth: That the said complainant on said accounting shall have the right to cause an examination of the officers, directors and employees of the said defendant *ore tenus* or otherwise, and the production of the books, vouchers, exhibits, statements and documents of the said defendant, as the said Master may direct, and that the said defendant, its officers, directors and employees shall attend for such purposes before the said Master from time to time as he shall direct;

Sixth: That the said complainant do recover from the 3
said defendant the costs of this suit to be taxed.

JOSEPH CROSS,
Judge.

Approved as to form.
W. P. PREBLE, JR.
Counsel for Defendant.

UNITED STATES OF AMERICA, }
District of New Jersey, } *ss.:*

I, Henry D. Oliphant, Clerk of the Circuit Court of the United States of America, for the District of New Jersey, in the Third Circuit, do hereby certify the foregoing to be 4
a true copy of the original Decree on file, and now remaining among the records of the said Court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the Seal of the
[SEAL.] said Court, at Trenton, in said District, this Twenty-fourth day of February, nineteen hundred and eleven.

H. D. OLIPHANT,
Clerk Circuit Court, U. S.

1 **DEFENDANTS' EXHIBIT No. 13.**

Filed April 19, 1911.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE THIRD CIRCUIT.

No. October Term, 1907.

J. L. MOTT IRON WORKS,

Appellant,

VS.

2 STANDARD SANITARY MANUFACTURING COMPANY,

Appellee.

Before DALLAS, GRAY and BUFFINGTON, Circuit Judges.

BUFFINGTON, J.

In the court below the Standard Sanitary Manufacturing Company, owner of patent No. 633,941, granted September 26, 1899, to James W. Arrott, Jr., for a dredger for pulverulent material, brought suit for the infringement
3 thereof against the J. L. Mott Iron Works. That court adjudged the patent valid and the three claims thereof infringed. From such decree the latter company appealed.

The patent concerns the process of enameling bath tubs and like wares, and that process consists in evenly distributing through a sieve powdered glass on the surface of such cast iron tubs raised to a high heat. This sprinkling process is repeated several times and after each the tub is reheated. This in time produces the thick glassy coating seen in the modern enamelled tub. To properly enamel a tub required that just the right amount of powdered glass should pass
4 through the sieve and be distributed; that it should be distributed uniformly over the tub, and that it should fall at right angles to the tub surface on which it was sprinkled. Failure to fulfill these requirements made a lumpy or wavy surface and an imperfect tub. In the practice both prior and subsequent to the patent, a heated tub was placed in a cradle and its position so shifted that an enameler could let the glass fall at right angles to its surface. In the old system he held the sieve with one hand and with the other struck its handle with a pronged tool and thus dropped the

powder through the sieve. It will be noted this work was done under great strain. The tubs were heated to some ten or eleven hundred degrees Fahrenheit and the sieve handle was short to enable the workmen with one hand to counterbalance the glass in the sieve. With the hand thus strained to support, he must at the same time horizontally move the sieve to secure uniform lateral distribution and meanwhile the force and frequency of the blows given by the other hand must be such as to discharge the precise amount of glass. Moreover, as the powder came through in distinct puffs or waves after each blow, the sieve must, to avoid the injurious wave effect, be moving when the blow was struck. The heat was such as to compel the use of asbestos clothes, apron, gloves and face screens. These difficulties are stated by different witnesses: "With the hand dredge it was very difficult to distribute the enamel evenly on the surface of the work on account of irregular rapping. When a man started in on a tub he could rap pretty fast, but toward the end of the operation he would get tired and rap more slowly. This made it enamel uneven. Sometimes on very large tubs, during the process of enameling my arm would give out and I would have to rest for a second or so on account of my arm being seized with cramps, which most of the enamelers experienced the same. Some enamelers that I worked with wore out their arms and had to stop work"; * * * "it was very hard to operate the hand dredge * * * on account of the difficulty to learn the right rap. That is the most difficult proposition in the hand dredge, is the rap"; * * * . "The operation of handling a hand-tapping dredge was not only difficult but laborious, and before a man could become expert in his work he was compelled to master the knack of depositing the enamel evenly upon the surface of the casting. It was always necessary to not only have a man of good judgment, but a man of physical strength. The constant tapping, and standing in front of a hot casting at the same time, was very exhausting. During the summer months, it was almost an impossibility to keep the furnaces fully manned, by reason of the men becoming exhausted at their work, largely on account of the labor connected with the applying of the enamel to the casting." By this method a skilled workman could enamel one tub an hour. Now the improvement made by Arrott was simple but effective. It converted an ordinary

1 sieve, by using a pneumatic hammer in connection therewith, into an automatic sprinkling machine. What the patentee did is thus described in the specification: "The object of this invention is to provide an automatic tapper or agitator which will deliver a succession of rapid blows against the side or end of the dredger and while relieving the workman of a great deal of labor causes the pulverulent material or powder to be evenly distributed and to be uniformly discharged. The device which I employ for this purpose is preferably a pneumatic hammer, the piston or plunger of which is elongated and fitted to the hollow handle of the dredger so as to recip-
2 rocate within the latter and strike the end or side of the dredger with every forward stroke." The proofs show that with Arrott's dredge a man can by touching a valve button secure a rapping action which is rapid, continuous and uniform. At the same time his hands are free both to sustain the load and to move the sieve over the surface and get a uniform lateral powder distribution. The blows are so rapid and regular that the powder instead of jetting through the sieve in a puff or distinct wave with each hand-struck blow, flows in a practically continuous, regular sheet. This device subjects an enameler to a much less strain in the face of ter-
3 rific heat, while it enables him to enamel three tubs an hour and such work can be done by less skilled and easier-taught men. While there were other improvements which enabled a factory to handle more tubs and to that extent may be said to have helped produce this substantial increase of output, yet it is manifest that save for Arrott's device, these other mechanical improvements would be of no avail owing to the limitations of human strength and endurance, which confined the old enameling process to impassable product bounds.

The prior art disclosed no such device as Arrott's, and
4 we are of opinion it was his individual work and involved patentability. It is easy now to minimize its importance and say it consisted simply in applying a pneumatic hammer to a sieve, but the fact remains that with the difficulty of enameling keenly recognized in the art, no one made such combination. Indeed, its inventive character is evidenced by the alleged anticipatory uses in the respondent's works. The combined use of a pneumatic hammer with a sieve was some years before there tried and abandoned. The evidence of exact practice is not such as to establish an

anticipatory use, for it is contradictory as to how the hammer was applied, but the highly significant fact is that even with the thought of a possible combination of pneumatic hammer and sieve suggested to men skilled in that art, they were not able to mechanically place the two in successful operative relation. But Arrott did just what they failed to do. He contributed to an important industry a device, labor-saving, effective, and which, in relieving to a degree labor under fierce heat conditions, rose to the plane of the humane. It was these results which the respondent failed to secure that make Arrott's work invention, and theirs a fruitless and abandoned experiment. Their work began and ended in groping trial. The varying positions, at different times, of the pneumatic hammer with relation to both handle and sieve evidence those tentative, uncertain steps of experiment, which neither forestall the work of, or withhold the reward from the real inventor. So holding, we are of opinion the court below committed no error in adjudging the patent valid and respondent's dredge, which is a mere duplication of complainant's device, an infringement. The appeal is therefore dismissed.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE THIRD CIRCUIT.

No. 53. October Term, 1907.

J. L. MOTT IRON WORKS,

Appellant,

vs.

STANDARD SANITARY MANUFACTURING COMPANY,

Appellee.

Appeal from the Circuit Court of the United States, for the District of New Jersey.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States, for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now ordered, adjudged

and decreed by this Court that the appeal in this cause be, and the same is hereby dismissed with costs.

GEO. M. DALLAS,
Circuit Judge.

Philadelphia. February 7, 1908.

(Endorsed: No. 53. October Term 1907. U. S. Circuit Court of Appeals Third Circuit. J. L. Mott Iron Works, Appellant, vs. Standard Sanitary Manufacturing Company, Appellee. Order dismissing appeal. Entered and filed, February 7, 1908, Wm. H. Merrick, Clerk.)

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *set.*
Third Judicial Circuit,

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original opinion and decree of this Court in the case of J. L. Mott Iron Works, Appellant, vs. Standard Sanitary Manufacturing Company, Appellee, on file, and now remaining among the records of the said Court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 20th day of February in the year of our Lord one thousand nine hundred and eleven and of the Independence of the United States the one hundred and thirty-fifth.

[SEAL.]

SAUNDERS LEWIS, Jr.,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

DEFENDANTS' EXHIBIT No. 14.

Filed April 20, 1911.

THE DAY-WARD CO.

March 2nd, 1908.

Mr. E. L. Wayman,
c/o Seamless Steel Bathtub Co.,
Detroit, Mich.

Dear sir;—

The writer has decided to leave tomorrow night for the East, as he has some matters to look after in New York for a day, and will meet yourself and Mr. Barnes in Trenton on Thursday morning at Mr. Mattlack's office about ten o'clock.

Yours respectfully,

D/F GEO. E. DAY

DEFENDANTS' EXHIBIT No. 15.

Filed April 20, 1911.

(Telegram)

Warren O Mar 3-08

E. L. Wayman,
Care Seamless Steel Bath Tub Co.,
Detroit, Mich.

Mattlack wires cannot meet us until Friday morning. Expecting letter will wire more definitely to-morrow.

GEORGE E. DAY

1 **DEFENDANTS' EXHIBIT No. 16.**

Filed April 20, 1911.

THE DAY-WARD CO.

March 4th, 1908.

Seamless Steel Bathtub Co.,
Detroit, Mich.

Gentlemen;—

We confirm our telegram to you of even date as follows;
2 "Advise Mr. Wayman to meet Mr. Day in Trenton Friday". Would say Mr. Wayman called us up by telephone from Pittsburg a short time ago and advised us that he would meet Mr. Day at Trenton on Friday.

Yours truly,
THE DAY-WARD CO.
W/F Per A. G. WARD

3

DEFENDANTS' EXHIBIT No. 17.

Filed April 20, 1911.

(Telegram)

Warren Ohio 4 Mar.

4 Seamless Steel Bath Tub Co
Detroit

Advise Mr. Wayman to meet Mr Day in Trenton friday
THE DAY WARD CO.

DEFENDANTS' EXHIBIT No. 18. 1

Filed April 20, 1911.

Mar. 11, 1908.

Mr. G. E. Day,
Warren, Ohio.

Dear Sir:—

I enclose you agency agreement which is the form of agreement used between the lamp manufacturer and the jobber who acts as agent for their particular brand of 2
lamps. There are some very good points in this which I have marked, and which could be used on a contract between the selling company and the jobber. You will note that it states very specifically that the jobber losses his rebate in case he does not live up to the contract. The Incandescent lamp manufacturers had in their agreement, the following:

"This Company is licensed to use the chemical exhaust process of obtaining a vacuum in lamps. This process is essential to the production of a lamp of the highest quality licensed in patent numbers." 3

The reproduction of the license label also appears on the letter-head. If this arrangement goes through, I think it would be well to have all of the manufacturers put on their letter-heads something to the following effect.

"This Company is licensed to use the automatic dredge process of applying porcelain to enamel ware. This process is essential to the production of enamel ware of the highest quality Licensed under patent ."

I am leaving this afternoon for New York and will be at the Manhattan Hotel until Saturday afternoon.

Trusting that this information will be of value to you 4
I am,

Yours very truly,

E. L. WAYMAN
Assistant Manager.

JW

1

DEFENDANTS' EXHIBIT No. 19.

Filed April 20, 1911.

SEAMLESS STEEL BATHTUB COMPANY
Union Trust Building
Detroit, Mich.

March 6, 1907.

Republic Mfg. Co.,
Chicago, Ill.

Gentlemen:—

2

CLAUSE (1). It is agreed that you will purchase from us 2000 assorted bath tubs; this entire quantity to be taken by you by March 31st, 1908.

CLAUSE (2). As this company is the owner of certain letters patent under which this product is manufactured, and is, therefore, interested in maintaining the value of these patents, it is agreed that you will maintain the selling prices issued by this company, as set forth in the sheet dated March 1st, copy of which is attached herewith, and is to be considered as part of this agreement, or such resale prices as may be established by the jobbers in the City of
3 Chicago.

It is understood that the prices mentioned in this agreement and in the price sheet attached, cover only the value of the product as furnished by us, and that no extra parts are to be furnished by you to your customers without making an extra charge for such additional equipment. In event of it being necessary to advance resale prices, you agree to adopt such advanced schedule of selling prices immediately upon notice from us that advanced resale prices become effective. Within five days of our request in writing, you agree to advise us definitely whether you have or
4 have not sold or offered to sell any product purchased in this agreement at lower prices or more favorable conditions of sale than those established in the city of Chicago.

CLAUSE (3). In consideration of this agreement being faithfully performed by you, we agree to invoice the product ordered in Clause one at a discount of 5%, to be deducted from the lowest quantity price as shown in net price list to Jobbers attached, or any Jobbers prices we may issue, except that when ordered in less than carload lots, the extra

charge for less than carload lots is to be paid by you, less 5%.

CLAUSE (4). It is agreed that we will not quote any other Jobber in the City of Chicago any better prices than our regular Jobber's prices. It is agreed that we will furnish you free of charge, such printed matter as we may issue from time to time, that may be necessary for the proper publicity of our product, and that all inquiries received from the City of Chicago, other than those from Jobbers will be referred to you for attention.

CLAUSE (5). Any violation by you of the terms of this agreement enables us to terminate this contract immediately upon notice in writing to that effect.

CLAUSE (6). The spirit of this contract is in the nature of a continual agreement, but may be cancelled by either party at the end of three months written notice.

Yours truly,

SEAMLESS STEEL BATHTUB COMPANY,

E. L. WAYMAN

Asst. Mgr

Accepted:—

REPUBLIC MFG. CO.

W. A. RATCLIFFE, *Prest.*

1

DEFENDANTS' EXHIBIT No. 20.

Filed April 20, 1911.

THIS AGREEMENT, Made in duplicate this day of by and between **the Seamless Steel Bathtub Co., a corporation organized and existing under the laws of the State of Michigan, *E. L. Wayman resident of the City of Pittsburgh of the State of Pennsylvania, (hereinafter called the "Licensor"), party of the first part, and.....

.....

2 .....

a corporation organized and existing under the laws of the State of (hereinafter called the "Licensee"), party of the second part,

WITNESSETH:

THAT WHEREAS, the Licensor has this day granted to the Licensee a non-exclusive class ( ) license to make and sell **Seamless Steel Bathtubs, *Sanitary Iron Enameled Ware* under the following United States Letters Patents, to wit:

3 upon the terms and conditions in said license and license agreement set forth; and

WHEREAS, the Licensor owns or has the right to grant licenses under the following additional United States Letters Patent, to wit:

AND WHEREAS, the Licensee is desirous of securing a license of the character and upon the terms and conditions hereinafter set forth under such last enumerated Letters Patent, for the manufacture and sale of the Licensor's

NOW, THEREFORE, for and in consideration of the covenants of this agreement, the parties hereto agree as follows:

4 The Licensor hereby grants to the Licensee, subject to the provisions hereinafter contained, a non exclusive license to practice in the manufacture of **Seamless Steel Bathtubs, *Sanitary Iron Enameled Ware* the processes patented in said several Patents, to make and use in such

* Matter printed in italics inserted in original.

** Matter printed in black stricken out in original.

manufacture the machines and devices patented in said 1
Patents and to use and sell goods so made; the said license being non-assignable and non-transferable, except to successors to substantially the entire good-will and business of the Licensee. This License shall be available for the Licensee, its successors or assigns only so long as it or they are not engaged in the manufacture of similar lines.

The Licensee shall pay the following royalties for license herein granted, to wit: —% of the net selling prices as established by the Licensor, **the net amount of royalties with all rebates deducted, as hereinafter provided for, not to be less than twenty five thousand (25,000) dollars for the first year, and not less than forty thousand (40,000) dollars per annum for each succeeding year during the life of this contract.**** 2

The Licensee shall on or before the 20th day of July, October, January and April, of each year during the term of this contract render to the Licensor a sworn statement in writing showing the number and description of goods made hereunder, sold and invoiced by the Licensee during the quarter then last past, and shall pay the royalties as above provided for each quarter on or before the 30th day of each of said months in each year. The books of account of the Licensee shall be open to inspection at all reasonable 3
times, of an accountant appointed by the Licensor, for the purpose of verifying the statements rendered under this agreement.

All terms, conditions, regulations and prices covered by this agreement now established by the Licensor and set forth in Schedules attached to and made part hereof shall be in force and effect until other terms, conditions, regulations or prices are substituted therefor by the Licensor, which substitution it is entitled to make from time to time hereafter by notice in writing to the Licensee. The Licensee covenants to adhere to and maintain such terms, conditions, 4
regulations and prices as may be established by the Licensor from time to time, **the licensor to be governed by competition in the regulation of prices and shall not name such prices that will prohibit the manufacture and sale of the product.*

* Matter printed in italics inserted in original.

** Matter printed in black stricken out in original.

1 **If at the end of the third quarter of the first year, (said year beginning) it shall appear that the Licensee has during the first quarter complied with all the terms of this agreement, the Licensor shall credit the Licensee upon its next succeeding payment hereunder with the following rebates from the royalties paid for said license for said first quarter's sales, to wit, 2-1/2% of the net selling prices (as establisheed by the Licensor), at which the goods were sold.**

At the termination of each succeeding quarter of the said license, if it shall appear that the Licensee has fully complied with all the terms of this agreement during the second preceding quarter, the Licensor shall make a similar rebate in respect of the royalties paid by the Licensee for sales made
2 **during the second preceding quarter.**

In case of failure on the part of the Licensee to comply fully with the terms of this agreement during any quarter the Licensor may withhold any and all unpaid rebates, and declare the same forfeited as penalty for said violation and shall at once notify the Licensee to that effect.**

Nothing in this agreement shall be construed to prevent the Licensee or its customers from exercising all the rights and privileges in any such territory as are at present enjoyed by or shall be extended to customers of any other Licensee under a similar license, **or customers of the Licensor.*

3 The Licensee admits the validity of said several Patents enumerated herein, for the purpose of this agreement and license only, and it is further agreed that upon the termination of this agreement and license for any cause the Licensee shall not be estopped to deny the validity of the said Patents, or any of them. The Licensor agrees that it will, upon the written request of at least three-quarters in number of the Licensees at any time holding licenses similar to this license, use all legal and equitable means to protect the Licensee in the full use and enjoyment of the rights under this agreement and license from all non-
4 licensed parties using any of said machines, processes or devices, or from any sale infringing said patents by customers or any such parties, either by suits or by bringing them under a similar license. If, however, the Licensor refuses to take such action against such non-licensed parties, other customers, or users of such non-licensed goods, for ninety days after being requested so to do, as before provided, this

* Matter printed in italics inserted in original.

** Matter printed in black stricken out in original.

license shall be voidable at the election of the Licensee communicated in writing to the Licensor, and the Licensee thereafter shall be released from all obligations hereunder, and shall not thereafter be estopped to deny the validity of said Patents or any of them. 1

No goods manufactured under this license shall be sold, unless they bear a registered label owned by the Licensee and in addition thereto a license tag or label approved by the Licensor, which license tag or label shall be placed in a **visible position on all goods made hereunder and sold by the Licensee.****

The Licensor shall give the Licensee the benefit of all further patents it may secure pertaining to, or such improvements it may make in the manufacture of Seamless Steel Bathtubs, without additional cost to the Licensee. The Licensee shall give the Licensor the same privileges without cost, should they come into possession, or have knowledge of, **all further patents and improvements in the manufacture of Seamless Steel Bathtubs.**** 2

This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of five (5) years from the date hereof, unless previously terminated as herein provided, and if the Licensee faithfully performs the conditions hereof throughout the contract period, this agreement and license shall be renewed at the expiration of said period, at the option of the Licensee, for a further terms of five years on conditions not less favorable than herein expressed. 3

This agreement, however, may be cancelled by the Licensor by written notice upon repeated breaches by the Licensee of any of the covenants herein contained; and shall terminate in any event upon the termination (for any cause whatsoever) of the License Agreement mentioned in the first recital of the preamble hereof.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year above written. 4

.....

.....

** Matter printed in black stricken out in original.

1

DEFENDANTS' EXHIBIT No. 21.

Filed April 20, 1911.

Co-operative Selling and Purchasing Contract

with

SEAMLESS STEEL BATHTUB COMPANY
Detroit Michigan

Manufacturers of

"SANISTEEL" Porcelained Baths.

2

THIS AGREEMENT, made this day of 190 , between the Seamless Steel Bathtub Company, a corporation organized and existing under the laws of the State of Michigan, party of the First (hereinafter called the "Company"), and of State of party of the Second part, (hereinafter called the "Purchaser"):

WITNESSETH:

THAT WHEREAS, the Company controls or is licensed under the following United States Letters Patent, relating to
3 Sanisteel Steel Bathtubs and processes and apparatus used in the manufacture thereof, to wit:

Number	Date	Inventor	Description

4

THAT WHEREAS, the Company is therefore interested in maintaining the value of these letters patent, it is willing to offer the Purchaser the benefit of the Co-operative Selling and Purchasing Plan outlined herein;

AND WHEREAS, the Purchaser desires to purchase from the Company as Licensee under said Letters Patent, Sanisteel Steel Baths for the purpose of selling to others, and the Company is willing to sell Sanisteel Steel Baths to the Purchaser for that purpose;

NOW, THEREFORE, in consideration of the premises and the covenants herein contained, it is agreed as follows: 1

1. The Company agrees to sell, and the Purchaser agrees to take and pay for, Sanisteel Porcelained Baths at the following prices:

Class A Grade A Guaranteed Baths (Porcelained inside only)

5′ 3″ Roll Rim "Lazarre" Baths List Price $27.00
5-1/2′ 3″ " " "Iole" " " " 30.75

Discounts: Less Carloads 30 and 5%. Carloads 30 and 10% 2

Class A Competition Baths (Porcelained inside only)

5′ 3″ Roll Rim Bath List Price $27.00
5-1/2′ " " " " " 30.75

Discounts: Less Carload 30 and 10% Carload 30 and 10 and 5%

Single Crates for holding one Bath 50 cents net
Combination Crates for holding two Baths 75 cents net

Prices fob cars Detroit, subject to freight allowances and equalizations as given in printed Price List of Company dated 3

Class AA Grade A Baths (Porcelained both sides)

5′ 3″ Roll Rim "Queen" Baths List $90.00
5-1/2′ 3″ " " "Princess" " " 105.00

Discounts: Lots of 1 to 12 inclusive Discount 60-10%
Lots of 13 to 24 inclusive " 60-10-5%
Lots of 25 to 49 inclusive " 66-2/3%
Lots of 50 to carload (80) " 66-2/3-5%

Boxing $2.00 extra net.
Prices fob Cars Detroit with no freight allowance. 4
Extra charges for all baths drilled "special".

Bell Supply .....$1.00 net
Overflow only ..... 1.00 "
Cock Holes etc 1.00
Hole in Rim ..... .25

2. The Purchaser shall observe and strictly maintain the "resale" selling prices as follows:

Class A Grade A Guaranteed Baths

1 Discounts: Lots 1 to 12 inclusive Discount 20%
13 to 24 " " 20-5%
25 to 49 " " 20-10%
50 to carload (120) " 30-5%

Class A Competition Baths

Discounts: Lots 1 to 12 inclusive Discount 20-5%
13 to 24 " " 20-10%
25 to 49 " " 20-10-5%
50 to carload (120) " 30-10%

Single Crates for holding one Bath 50 cents net
2 Combination Crates for holding two Baths 75 cents net
Prices fob cars Detroit, subject to Freight allowances and equalizations as given in printed Price List of Company dated

Grade A Class AA Baths

Discounts: Lots of 1 to 6 inclusive Discounts 50-10%
7 to 12 " 60%
13 to 20 " 60-5%
21-30 60-10%
31 to carload (80 baths) 66-2/3%

3 Boxing $2.00 extra net
Prices fob cars Detroit with no freight allowance.

Extra charge for all Baths drilled "special"

Bell Supply	$1.00	net
Overflow only	1.00	"
Cock-Holes other than 3-3/8" between centers	1.00	"
	.25	"

3. It is understood that the "resale" Prices maintained in this agreement and the price list attached cover only the
4 value of the product as furnished by the Company, and that no extra parts are to be furnished the Purchaser's customers without making an extra charge for same at market prices. In the event of it being necessary to advance resale prices the Purchaser agrees to adopt such advanced schedule of selling prices immediately upon notice from the Company that advanced resale prices become effective. Within 5 days of the Company's request in writing, the Purchaser agrees to advise the Company definitely whether it has or has not sold or offered to sell any product pur-

chased in this agreement, at lower prices or on more favorable conditions of sale than those established by the Company. 1

4. The Company guarantees its "First grade guaranteed ware", bearing its Blue and Gold Guarantee Label, for a period of 5 years from date of sale, against "inherent defects" of any nature. This means that with ordinary usage and in ordinary changes of atmosphere, subjecting the tub to alternate hot and cold water, that the enamel will not crack or craze. Should inherent defects develop during the life of our guarantee, we will replace the goods "free of charge", which means that *in addition to replacing the goods, we will re-imburse the Purchaser for Freight Charges, Cartage, cost of labor in taking out and installing "the replacing" fixtures as well as decorating charges, if they have been incurred.* 2

5. The Company guarantees its "Competition" (Second grade Baths showing minor defects in workmanship and *not* bearing our Guarantee Label) for a period of *one* year from date of sale against "inherent defects" of any nature. This means that with ordinary usage and in ordinary changes of atmosphere, subjecting the tub to alternate hot and cold water, that the Porcelain Enamel will not crack or craze. Should inherent defects develop during the life of our guarantee, we will replace the goods "free of charge", which means *that in addition* to replacing the goods, *we will re-imburse the purchaser for Freight and Cartage Charges,* but *will not be responsible* for any other charges in connection with "replacing". 3

6. The Company agrees to inaugurate a general publcity campaign to the consuming public, architects, plumbers etc., and to furnish the Purchaser, free of charge, such printed matter as the Company may issue from time to time, that may be necessary for the proper publicity of its product. 4

7. In consideration of the Purchaser carrying a proper stock to meet the demand created by the Company, the Company agrees to allow the Purchaser to return at the purchase price any goods not disposed of within 6 months from date of shipment by the Company, provided they do not contain defects other than inherent defects arising from defective workmanship or material.

DEFENDANTS' EXHIBIT No. 22.

Filed April 20, 1911.

We, the undersigned, manufacturers of enameled sanitary iron ware, hereby agree to form an Association to be known as "The Sanitary Enameled Ware Association". Said Association is formed and is to be governed along the lines of a report on resolutions and by-laws presented by a Committee selected and empowered for such purpose. The said report and its conditions are hereto attached and are a part of this agreement and are not subject to changes excepting such variation as the wisdom of the Body may from time to time, by a majority vote, decide.

Witness the signatures of the parties hereto in the presence of each other or in the presence of witnesses, the latter provision being made for such members as are not here present today.

Dated Pittsburgh, Pa., August 4th, 1909.

Blairsville Enameled Ware Co
F. D. Cook Prest

Standard Sanitary Mfg Co
by Francis J. Torrance, V. P.

Union Sanitary Mfg Co.
C E Gates.

L. Wolff Mfg Co
H. M. Hoelscher Asst Secy

The Humphryes Mfg Co
by D A Carpenter

United States Sanitary Mfg Co
A H Cline Jr Sec'y

Wheeling Enameled Iron Co
by J E Wright Prest

Clymer Mfg Co
W. A. Guthrie Pres

The Cahill Iron Works
By F. H. Caldwell Prest.

National Sanitary Mfg Co
F G Borden Pres.

J. M. Kohler Sons Co
Walter J. Kohler
Pres.

The McCrum-Howell Co
Howard T. Gates
Secretary

The J. L. Mott Iron Works.
John Reid
Treasurer.

The Day Ward Co
By A G Ward

Colwell Lead Co.
J. T. Duryea.

A. Weiskittel & Son Co
By Anton Weiskittel

McVay & Walker
Alex. C Walker

The Barnes Mfg. Co.
T R Barnes
Scty & Gen Mgr

Iron City Sanitary Mfg Co
J A Kelly Secy & Treas

The Object of the Association. 1

Resolved:—that the manufacturers of enameled ware here assembled form "An Association of Manufacturers of Enameled Ware" with the object of general benefit and improvement of the business in which the several Concerns are engaged.

#1. The regulation of sizes of various styles and patterns of wares.

2. Uniformity in catalogue or list prices for similar goods. 2

3. Uniformity in delivery points, keeping in mind the rights of the jobbers as to competition among themselves.

4. Protection as to freight classification and freight rates on the products of the members of the Association.

5. A general uniformity in the conduct of the business with at all times due regard for the interests of the parties hereto and proper and just respect for the law.

6. The Association is not formed to control or regulate prices of goods manufactured by its members.

3

The name of the Association shall be "The Sanitary Enameled Ware Association."

The officers shall be President, Treasurer, and Secretary with an Executive Committee of five, all of whom shall be actively engaged in the manufacture of Enameled Ware.

A commissioner or Actuary shall be employed at a stated salary. His duties will be specified by the Executive Committee and their actions shall be passed upon by the Association at its regular or special meetings.

All officers and the Executive Committee shall be elected by ballot. 4

The meetings of the Association shall be held on the first Wednesday of August, October, December, February, April and June.

The Executive Committee shall meet monthly at such time and place as it may elect. The members of the Executive Committee shall be allowed their respective railroad fare and sleeping-car fare incident to their attendance at the meetings of their Committee.

Of the five members selected at this meeting, the three

1 receiving the highest number of votes shall serve for two years from date thereof and the two receiving the lowest number of votes shall hold office for one year and at the next annual meeting two members shall be elected to this Committee and at the second annual meeting, the three members shall be elected. This paragraph is not to be construed to prevent the election of any member at the expiration of his term.

In the interim of Association meetings, the Executive Committee shall have full power to transact the business of the Association but shall take no action that would be in-
2 consistent with the rights and interests of the Association or that would render void previous acts of the Association.

The expenses of the conduct of the Association shall be provided for by an assessment made upon and collected from the members. The rate or proportion shall be fixed by the Executive Committee and as nearly as possible be in proportion to the volume of enameled iron business of the several members.

One vote shall be accredited to each Concern member of the Association but any firm or corporation may be represented by as many of their concern at any regular or
3 special meeting as they desire.

4

DEFENDANTS' EXHIBIT No. 23. 1

Filed April 21, 1911.

ST CLAIR HEIGHTS SYNDICATE, Limited

Detroit, Mich., April 29, 1910

Mr. W. A. Myler,
Pittsburgh, Pa.

My dear Sir.

Mr. E. L. Wayman was in to see about a subject we had often discussed while associated with the Seamless Steel Bath Tub Company, namely, all of the Patents owned by the Standard Sanitary Mfg. Co. and others used in the economical manufacturing of Enameled Ware, as I understand it he has negotiated far enough along, so that now it becomes a question of money to carry out his plan. It is my disposition to help him both financially and otherwise as our relations have been such that a brotherly feeling exists between us. On account of my experience and negotiations in Seamless & Real Estate I have used up the limit of my credit at our local Bank till I begin to realize on properties and securities I own. Consequently, I cannot borrow on collateral, even which ordinarily they would accept from me or any of their customers. Therefor in order to assist Mr. Wayman I would like to deposit with you certain stock collateral namely, Universal Electric Welding Co. of New York. Certificate for which I have given to Mr. Wayman in exchange for which you could loan him an amount of priced or quoted stock on which he could borrow an amount equal to his needs of the banks here in Detroit. He will explain to you the method and manner by which this can be accomplished as we have both gone over the situation carefully. I am in hopes to have the actual money at a later date and will then pay his obligation and retire any collateral that may be used for his purpose and benefit. The stock I am loaning Mr. Wayman has a value of about $75.00 per share and will increase as Mr. Wayman is aware of, on account of advantageous royalty contracts they have. By assisting Mr. Wayman in the premises, you will be doing him a favor, without risk to yourself, which I will very much appreciate and hope to be able to reciprocate at some future period.

2

3

4

Awaiting your decision

Believe me, Most sincerely

EUGENE H. SLOMAN.

1

DEFENDANTS' EXHIBIT No. 24.

Filed April 21, 1911.

ST CLAIR HEIGHTS SYNDICATE, Limited

Detroit, Mich., April 29th, 1910

Received of Eugene H. Sloman Certificate No. 1030 for 300 Shares of Universal Electric Welding Co's Stock which I am using for the purpose of obtaining a loan on, which money I propose using to purchase certain enamel ware patents which will afterwards be leased out on royalty and I hereby agree out of the first money available to pay such loan
2 as I may have negotiated and return said stock to said Eugene H. Sloman at the earliest date.

E. L. WAYMAN.

DEFENDANTS' EXHIBIT No. 25.

Filed April 21, 1911.

(Endorsed on back of foregoing.)

April 29th, 1910.

I hereby agree and consent that the value at present
3 of this stock is $75.00 per share, for which I obligate myself if the stock is not returned within seven (7) months from date.

E. L. WAYMAN.

DEFENDANTS' EXHIBIT No. 26.

Filed April 21, 1911.

STANDARD SANITARY MFG. CO.

Pittsburgh, U. S. A. May 2, 1910

Mr. Eugene H. Sloman,
4 Detroit, Mich.

Dear Sir:

Your letter of April 29th together with certificate of Universal Electric Co. #1030 for 300 shares of stock in the name of Maurice Lachman, and endorsed in blank by him, has been handed to me by Mr. Wayman, and is satsfactory as per your letter.

Yours truly,

W. A. MYLER.

DEFENDANTS' EXHIBIT No. 27. 1

Filed April 21, 1911.

ST. CLAIR HEIGHTS SYNDICATE, Limited

Detroit, Mich., Aug. 20th, 1910.

Mr. W. A. Myler
Pittsburgh, Pa

Dear Mr. Myler—

Enclosed herewith I am enclosing to you Certificate D230 for 100 Shares of Standard Sanitary Mfg Co's Stock upon which my loan here in Detroit was negotiated, which I have paid today in full, Mr. Sloman being with me and he requests at your early convenience, that you return to him the certificate for 300 shares of the Universal Electric Welding Co's Stock deposited with you. He desires me to express to you his appreciation of the favor shown and it is needless to say that I add my own. 2

With kindest regards, I am

Yours truly
E. L. WAYMAN. 3

P.S For safety I am sending this via Express.

4

1 **DEFENDANTS' EXHIBIT No. 28.**

Filed May 8th, 1911.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-5311001-I
May 31st, 1910.

Mr. F. J. Torrance,
c/o Standard Sanitary Mfg. Co.,
New York, N. Y.

2 Dear Sir:—

Beginning tomorrow, will you kindly keep a record of your Furnaces in operation? The latter part of the week, I will send you printed forms to keep these records on, which are to be forwarded to me monthly.

Yours very truly,

E. L. WAYMAN,
Licensor.

Copies sent
to Mr. Ahrens—Louisville
" Mr. Dawes—Pittsb

3

DEFENDANTS' EXHIBIT No. 29.

Filed May 8th, 1911.

EDWIN L. WAYMAN
Arrott Building
Pittsburgh

W-6131007-I
June 13th, 1910.

To the Licensees:

4 In order that there may be no misunderstanding, I wish to advise you that it is not the intention to confine the execution of the Jobbers' License Agreement to the list of names given in the Blue List. All firms, that do a Jobbing business, are entitled to buy goods provided the individual Manufacturers desire to sell them, if they will execute this contract.

Yours very truly,

Licensor.

COLWELL LEAD COMPANY EXHIBIT No. 1. 1

Filed April 17th, 1911.

D-41312-W

STANDARD SANITARY MFG. CO.

Pittsburgh, U. S. A. Apr. 13/09

Mr. B. O. Tilden, President,
American Sanitary Works,
New York, N. Y.

Dear Sir: 2

In answer to your favor of the 10th inst. would state that the license that we have given for the use of our pneumatic dredge was $1.00 per furnace per day while the furnace is in operation. In other words, if you have ten furnaces on which you are using the pneumatic dredges, it would cost you $10.00 a day. Credit would be allowed for a furnace out of operation for a week or greater length of time, simply for a furnace to be shut down for a day or two there would be no credit.

Yours truly,

E. L. DAWES, 3
Mgr.

Received Apr 14 1909 Am. Sanitary Wks. N. Y. Office.

4

75211

Volume A.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1912.

No. [illegible] 554.

STANDARD SANITARY MANUFACTURING COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

PLEADINGS, ORDERS, &c.

FILED FEBRUARY 16, 1912.

(23,064)

(23,064)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 988.

STANDARD SANITARY MANUFACTURING COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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3—Memorandum of agreement drawn up by Edwin L. Wayman March 2, 1910, Vol. I, pp. 11 *et seq.*.. 4

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5—Preliminary agreement for assignment of Arrott patent by Standard Sanitary Mfg. Co. to E. L. Wayman, May 4, 1910 ... 8

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7—Minutes of meeting of members of Sanitary Enameled Ware Association on February 1, 1910, at Pittsburgh, showing who was present ... 12

8—Sample copy of proposed form of license agreement to be executed between each of the manufacturers and Wayman, issued to manufacturers about March 24, 1910, Vol. I, p. 36. ... 13

9—License agreement as executed between Wayman and the several corporation defendants. ... 20

10—Sample copy of proposed form of jobbers' license agreement to be entered into by each of the manufacturers with the jobbers of plumbing supplies. This form, in print, was sent to the several manufacturers about March 23, 1910. Vol. I, p. 36. ... 27

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UNITED STATES OF AMERICA,
District of Maryland, To wit:

At a Circuit Court of the United States in and for the Maryland District, Begun and Held at the City of Baltimore on the First Monday in November (Being the Sixth Day of the Same Month), in the Year of Our Lord One Thousand Nine Hundred and Eleven.

Present:

The Honorable Nathan Goff, U. S. Circuit Judge.
Jeter C. Pritchard, U. S. Circuit Judge.
Thomas J. Morris, Judge Maryland District.
John C. Rose, Judge Maryland District.
John Philip Hill, Esq., Attorney.
George W. Padgett, Esq., Marshal.
Arthur L. Spamer, Clerk.

Among others were the following proceedings, to wit:

In Equity.

UNITED STATES OF AMERICA, Petitioner,
vs.
STANDARD SANITARY MANUFACTURING COMPANY, A. WEISKITTEL & Co., The Barnes Manufacturing Company, The Cahill Iron Works, Colwell Lead Company, The Day-Ward Company, The Humphreys Manufacturing Company, Kerner Manufacturing Company, The J. L. Mott Iron Works, McVay & Walker, The McCrum-Howell Company, The National Sanitary Manufacturing Company, Union Sanitary Manufacturing Company, United States Sanitary Manufacturing Company, L. Wolff Manufacturing Company, Wheeling Enameled Iron Company, Theodore Ahrens, Frank J. Torrance, E. L. Dawes, W. A. Myler, Anton Weiskittel, John D. Heise, C. H. Voegele, T. R. Barnes, F. H. Caldwell, J. J. Mahoney, Jesse T. Duryea, Bert O. Tilden, W. C. Winfield, A. G. Ward, S. N. Ford, Reid Carpenter, J. A. Frauenheim, Jordan L. Mott, Max Goebel, Thomas Walker, Alexander C. Walker, Lloyd G. McCrum, Howard G. Gates, Frank G. Borden, D. W. Davis, L. C. Huesman, E. V. Bringham, Charles Arrott, A. H. Kline, Jr., Ludwig Wolff, Herman Hoelscher, J. E. Wright, George W. Franzheim and Edwin L. Wayman, Defendants.

Petition in Equity.

Filed July 22, 1910.

In the Circuit Court of the United States for the District of Maryland.

No. —.

UNITED STATES OF AMERICA, Petitioner,
v.
STANDARD SANITARY MANUFACTURING COMPANY AND OTHERS,
Defendants.

To the Honorable Judges of the Circuit Court of the United States for the District of Maryland, sitting in equity.

The United States of America, by John Philip Hill, its attorney for the district of Maryland, acting under the direction of the Attorney-General, brings this proceeding in equity against—

Standard Sanitary Manufacturing Company.
A. Weiskittel & Co.
The Barnes Manufacturing Company.
The Cahill Iron Works.
Colwell Lead Company.
The Day-Ward Company.
The Humphreys Manufacturing Company.
Kerner Manufacturing Company.
The J. L. Mott Iron Works.
McVay & Walker.
The McCrum-Howell Company.
The National Sanitary Manufacturing Company
Union Sanitary Manufacturing Company.
United States Sanitary Manufacturing Company
L. Wolff Manufacturing Company.
Wheeling Enameled Iron Company.
Theodore Ahrens.
Francis J. Torrance.
E. L. Dawes.
W. A. Myler.
Anton Weiskittel.
John D. Heise.
C. H. Voegele.
T. R. Barnes.
F. H. Caldwell.
J. J. Mahoney.
Jesse T. Duryeo.
Bert O. Tilden.
W. C. Winfield.
A. G. Ward.
S. N. Ford.
Reid Carpenter.

J. A. Frauenheim.
Jordan L. Mott.
Max Goebel.
Thomas Walker.
Alexander C. Walker.
Lloyd G. McCrum.
Howard G. Gates.
Frank G. Borden.
D. W. Davis.
L. C. Huesman.
E. V. Bringham.
Charles Arrott.
A. H. Kline, Jr.
Ludwig Wolff.
Herman Hoelscher.
J. E. Wright.
George W. Franzheim.
Edwin L. Wayman.

The defendants above named, engaged in interstate and foreign trade and commerce in sanitary enameled iron ware, are violating the provisions of the act of Congress passed July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and this proceeding is instituted to prevent and restrain the hereinafter particularly described contracts, combinations, and conspiracies in restraint of trade in sanitary enameled iron ware among the several States and with foreign nations.

On information and belief your petitioner alleges and shows:

I.

1. Standard Sanitary Manufacturing Company is a corporation organized under the laws of the State of New Jersey, with its principal offices at Pittsburg, Pa., in the Bessemer Building.

A. Weiskittel & Son Company is a corporation organized under the laws of the State of Delaware, with its principal office in the city of Baltimore, Md.

The Barnes Manufacturing Company is a corporation organized under the laws of the State of Ohio, with its principal office at Mansfield, Ohio.

The Cahill Iron Works is a corporation organized under the laws of the State of Tennessee, with its principal office at Chattanooga, Tenn.

Colwell Lead Company is a corporation organized under the laws of the State of New York, with its principal office at New York City, N. Y.

The Day-Ward Company is a corporation organized under the laws of the State of Ohio, with its principal office at Warren, Ohio.

The Humphreys Manufacturing Company is a corporation organized under the laws of the State of Ohio, with its principal office at Mansfield, Ohio.

Kerner Manufacturing Company is a corporation organized under

the laws of the State of Penn-sylvania, with its principal office at Pittsburg, Pa.

The J. L. Mott Iron Works is a corporation organized under the laws of the State of New York, with its principal office at New York City, N. Y.

McVay & Walker is a corporation organized under the laws of the State of Pennsylvania, with its principal office at Braddock, Pa.

The McCrum-Howell Company is a corporation organized under the laws of the State of Connecticut, with its principal office at New York City, N. Y.

The National Sanitary Manufacturing Company is a corporation organized under the laws of the State of Ohio, with its principal office at Salem, Ohio.

Union Sanitary Manufacturing Company is a corporation organized under the laws of the State of Indiana, with its principal office at Noblesville, Ind.

United States Sanitary Manufacturing Company is a corporation organized under the laws of the State of Pennsylvania, with its principal office at Pittsburg, Pa.

L. Wolff Manufacturing Company is a corporation organized under the laws of the State of Illinois, with its principal office at Chicago, Ill.

Wheeling Enameled Iron Company is a corporation organized under the laws of the State of West Virginia, with its principal office at Wheeling, W. Va.

Theodore Ahrens, Francis J. Torrance, E. L. Dawes, and W. A. Myler are president, first vice-president, second vice-president, and treasurer, respectively, of the Standard Sanitary Manufacturing Company.

Said defendants will be hereinafter referred to as "corporation defendants" and "defendants."

The individuals made defendants herein and hereinafter called "individual defendants" and "defendants" are, respectively, officers of the several corporation defendants as follows:

Anton Weiskittel and John D. Heise are president and secretary, respectively, of A. Weiskittel & Son Company and reside in the City of Baltimore, Md.

C. H. Voegele and T. R. Barnes are, respectively, president and secretary of The Barnes Manufacturing Company.

F. H. Caldwell and J. J. Mahoney are, respectively, president and vice-president of The Cahill Iron Works.

Jesse T. Duryea and Bert O. Tilden are, respectively, president and secretary of the Colwell Lead Company.

W. C. Winfield and A. G. Ward are, respectively, president and vice-president of The Day-Ward Company.

S. N. Ford and Reid Carpenter are, respectively, president and secretary of The Humphreys Manufacturing Company.

J. A. Frauenheim is president of the Kerner Manufacturing Company.

Jordan L. Mott and Max Goebel are, respectively, president and secretary of The J. L. Mott Iron Works.

Thomas Walker and Alexander C. Walker are, respectively, president and director of McVay & Walker.

Lloyd G. McCrum and Howard G. Gates are, respectively, president and secretary of The McCrum-Howell Company.

Frank G. Borden and D. W. Davis are, respectively, president and secretary of The National Sanitary Manufacturing Company.

L. C. Huesman and E. V. Bringham are, respectively, president and secretary of the Union Sanitary Manufacturing Company.

Charles Arrott and A. H. Kline, jr., are, respectively, president and secretary of the United States Sanitary Manufacturing Company.

Ludwig Wolff and Herman Hoelscher are, respectively, president and secretary of the L. Wolff Manufacturing Company.

J. E. Wright and George W. Franzheim are, respectively, president and secretary of the Wheeling Enameled Iron Company.

Edwin L. Wayman is a resident of Pittsburg, with offices in the Arrott Building in that city.

All of said individual defendants, except Edwin L. Wayman, are directors of the corporation defendants, of which they are, respectively, officers as aforesaid, and as such officers and directors participate in the management and direction of the business of the corporation defendants, of which they are respectively officers and directors, and are responsible therefor.

II.

All of the defendants above named have been for many years and now are engaged in the manufacture of sanitary enameled iron ware, such as bath tubs, washbowls, lavatories, drinking fountains, sinks, closets, urinals, etc., at their several factories, located respectively as follows:

Standard Sanitary Manufacturing Company, at Allegheny and New Brighton, Pa., and Louisville, Ky.

A. Weiskittel & Son Company, at Baltimore Md.

The Barnes Manufacturing Company, at Mansfield, Ohio.

The Cahill Iron Works, at Chattanooga, Tenn.

Colwell Lead Company, at Elizabeth, N. J.

The Day-Ward Company, at Warren, Ohio.

The Humphreys Manufacturing Company, at Mansfield, Ohio.

Kerner Manufacturing Company, at Zelienople, Pa.

The J. L. Mott Iron Works, at Trenton, N. J.

McVay & Walker, at Braddock, Pa.

The McCrum-Howell Company, at Uniontown, Pa., and Norwich, Conn.

The National Sanitary Manufacturing Company, at Noblesville, Ind.

Union Sanitary Manufacturing Company, at Noblesville, Ind.

United States Sanitary Manufacturing Company, at Monaco, Pa.

L. Wolff Manufacturing Company, at Chicago, Ill., and Trenton, N. J.

Wheeling Enameled Iron Company, at Wheeling, W. Va.

The defendants above named for many years have been and now are engaged in selling and shipping from their several places of manufacture said products of enameled iron ware into States of the United States other than those wherein the said articles have been manufactured as aforesaid and in selling and shipping said products to foreign countries. All of the defendants have agents in different parts of the United States who solicit orders for their products, which are then shipped pursuant to such orders from the several factories of defendants to customers placing the orders, such customers being located in other States than those wherein the factories are situated, or shipped to such agents of the defendants who are also located in other States. All the defendants sell and ship their products generally throughout the United States, and to a less extent to foreign countries, and so are engaged in interstate and foreign trade and commerce in enameled iron ware within the meaning of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies."

The only manufacturers and dealers in articles of similar character, that is, sanitary enameled iron ware, located in the United States, other than the defendants above named, are J. M. Kohler Sons Company, of Sheboygan, Wis.; the Iron City Sanitary Manufacturing Company, of Pittsburg, Pa.; the Blairsville Enameled Ware Company, of Blairsville, Pa.; the Clymer Manufacturing Company, of Indiana, Pa.; Louis Lipp, of Cincinnati, Ohio; and Washington Iron Works, of Los Angeles, Cal.

Of the total volume of the interstate and foreign business, trade and commerce in said products of sanitary enameled iron ware being carried on by the defendants and by their six competitors, above named, the defendants have and control the principal part; that is to say, 85 per cent thereof.

The defendants and their said competitors would severally be now conducting their said interstate and foreign business, trade, and commerce in sanitary enameled iron ware each in competition with the others as to the prices at which they are selling their commodities, as to the terms and conditions of sale in said interstate and foreign business, as to customers and extent and distribution of output, and as to all other matters in respect to which genuine competitors naturally compete if the said defendants had not engaged in the unlawful combination and conspiracy in restraint of said trade and commerce and in the unlawful attempt to monopolize the same, which will be hereinafter described.

III.

Sometime during the latter part of the year 1909, or early in 1910, the exact date being unknown to petitioner, the defendants unlawfully and knowingly engaged in a combination and conspiracy in restraint of the interstate and foreign trade and commerce in sanitary enameled iron ware above described, and since that time they have been continuously and are now engaged in such combination and

conspiracy, whereby such interstate and foreign trade and commerce has been and is now being restrained in the following manner:

The defendants by agreement have eliminated and suppressed all competition between each other as to the prices at which they are selling in interstate and foreign commerce their products of sanitary enameled iron ware, and they have fixed and established and are now maintaining uniform prices and terms of sale to their respective customers. The discounts which the defendants quote and allow to jobbers in carrying on such commerce are arrived at by agreement between defendants, and each defendant quotes and allows such discounts only as are agreed upon, known to, and accepted by the other defendants.

Defendants have determined upon and are observing a uniform method of selling their products of sanitary enameled iron ware to jobbers under written contracts whereby each jobber is compelled to sell at certain fixed resale prices. These contracts are the same to all jobbers throughout the United States. No defendant will sell in said commerce any sanitary enameled iron ware except pursuant to the terms of these uniform contracts, which establish uniform resale prices which jobbers must observe in sales to their customers. Under the terms of the combination no defendant will sell to any jobber who has not signed such a contract and agreed to sell at such resale prices. No defendant will sell to any jobber who is buying any sanitary enameled iron ware from other manufacturers than those who are parties to the combination.

No defendant will sell any of its products in such commerce to any person or company who is not recognized by all the defendants as a jobber. That is to say, all the defendants confine their sales to such persons as all the defendants consider to be legitimate jobbers of sanitary enameled iron ware.

The result of the combination is that to-day throughout the United States all purchasers and users of the aforesaid products of sanitary enameled iron ware are obliged to pay the same prices, which have been and are now fixed by the defendants by mutual agreement and without competition with each other.

The defendants have devised means by which each of them is advised of the amount of the output of each of the other defendants in order that thereby they may by agreement limit and restrict their respective outputs as may seem advisable.

The defendants have divided the United States into certain territorial or geographical zones, and by their system of contracts are restricting each jobber in making sales to the zone in which that jobber is located; in other words, the arrangement is such that no jobber is allowed to sell outside his zone. This feature is designed to restrict the competition of jobbers, and to enable the manufacturers to hold the jobbers firmly to the selling arrangement and to the resale prices fixed by the combination.

The defendants by agreement have largely and unreasonably increased the prices at which they sell their products to jobbers, and more particularly they have advanced the resale prices of jobbers by their system of contracts controlling resale prices.

The defendants are cooperating in fighting the manufacturers of sanitary enameled iron ware and dealers therein in interstate commerce who have not become parties to the combination, and all defendants have united and are now engaged in a common effort to force such manufacturers and dealers into the combination or else to drive them out of business. As a means to that end defendants are refusing to sell to jobbers of sanitary enamelel iron ware who are buying from manufacturers who are not members of the combination, and defendants will sell only to such jobbers as agree to confine their purchases to the members of the combination.

The defendants have established and are enforcing a system of severe penalties which are imposed upon such members of the combination as depart from the rules respecting prices and terms of sale fixed by the combination; that is to say, if any defendant sells at discounts or prices or terms of sale other than those agreed upon by all the defendants he is obliged to forfeit a heavy penalty, which is paid into a common fund of the defendants.

IV.

The defendants have at all times recognized that a combination of the character hereinabove described is unlawful, being contrary to the provisions of the Sherman antitrust act, and they know full well that engaging in such a combination and conspiracy is a continuous violation of that act. However, the defendants, as previously stated, have been and are now engaging in said combination and furthermore they have tried and are now trying to conceal their true purposes and the real character of the combination by the adoption of a plan intended by them to give to their acts a lawful aspect and to the combination a legal form.

By the conditional assignment, for a nominal consideration, of three patents on certain tools owned and used by three of the defendants in the manufacture of some of their products of enameled iron ware, to defendant Edwin L. Wayman, who was selected as assignee by agreement of all the defendants, and by a system of license agreements to manufacture and sell enameled iron ware, entered into ostensibly under those patents by all the corporation defendants, and other license agreements to sell, entered into by jobbers, defendants have sought and are now seeking to accomplish and are accomplishing all the unlawful objects, purposes, and results hereinabove described in Division III (pp. 11-14).

As previously stated, all the defendants were and are manufacturing sanitary enameled ironware, such as bathtubs, washbowls, lavatories, drinking fountains, sinks, closets, urinals, etc., and were and are selling and shipping their products throughout the United States and abroad and so are engaged in interstate and foreign trade and commerce and have been so engaged for many years. These products were and are manufactured under different patents and a variety of processes by the various defendants. All of the defendants determined and agreed that three competing patents, being patents for tools called "dredger for pulverulent material." "pneumatic sieve" and "enameling powder distributor" respectively should be

assigned by three defendant[illegible]ch of whom owned one patent, to defendant E. L. Wayman, each patent for a nominal consideration and subject to reassignment at the expiration of a short term on the demand of the party making the assignment to Wayman. In accordance with this agreement the following patents were assigned to Wayman: The Arroot patent, No. 633,941, by the Standard Sanitary Manufacuring Company; the Dithridge patent, No. 949,625, by the J. L. Mott Iron Works; the Lindsay patent, No. 939,918, by L. Wolff Manufacturing Company.

These patents, and the tools they cover, while useful and valuable in the manufacture of sanitary enameled iron ware, are not essential thereto. Moreover, they do not apply to and are not used in the manufacture of a large number of articles specified in the price list, hereto attached as a part of this bill (Exhibit 11), the sale of which articles in inter-state commerce, like the sale of all articles manufactured and sold by defendants, is controlled by the licensing arrangement. All the defendants had for years manufactured their products, without using such patents, by other patents and methods equally serviceable and almost as economical. The sole purpose of the assignment was that the patents might screen the real intent of the defendants and serve as a mere subterfuge and a device to evade the Sherman antitrust law.

Before the assignments were made all the defendants had agreed upon all the essential features of the licensing arrangement. They had determined upon all the principal conditions and terms of the contracts to be entered into by the manufacturers with Wayman, ostensible licensor; upon the jobbers' licensing agreements; upon the resale prices at which jobbers should sell in interstate commerce to plumbers, retailers, and consumers. They had agreed upon a price list wherein were stated all the articles of sanitary enameled iron ware made by all of the defendants and in which were specified the prices at which those articles should be sold by the defendants throughout the United States and the re-sale prices which jobbers should observe in making sales of the same articles to their customers. In other words, this price list arrived at by agreement and consultation between defendants and without competition between them fixes the price which every user of sanitary enameled iron ware in the United States must pay for every article manufactured by the defendants.

Copies of the manufacturers' license agreement, the jobbers' license agreement, and the price list are attached hereto and made parts of this petition, numbered Exhibits 8, 9, and 10, respectively.

Exhibits 1-7, attached hereto and made parts of this petition, evidence the manner in which the licensing arrangement was arrived at.

Exhibits 11-17, also attached hereto as parts of this petition, illustrate the methods of defendants and the effect of the combination upon independent manufacturers and jobbers who have not signed the license agreements.

To repeat, all the terms and conditions of all the contracts and agreements which together make up the licensing arrangement had

been agreed upon by all the defendants prior to the assignment of the patents to Wayman. Furthermore, each defendant stipulated as a condition to his executing the license agreement that all the others should execute a similar agreement. No defendant would have executed the agreement unless he had been certain that all the other defendants would execute it. The agreement on the part of all the defendants to enter into the license arrangement was a condition precedent to the assignment of the patents to Wayman. There would have been no such assignment to Wayman and no licensing agreement with any if all the corporation defendants had not agreed to go into the scheme. In fact, all the parties to the agreement were not and are not seeking the use of a valid and essential patent, necessary in the carrying on of their business, but were and are establishing and maintaining a price-fixing plan designed to eliminate all rivalry between them and deprive the public of the advantages which flow from free and unrestrained competition.

V.

Petitioner charges on information and belief, that the defendants are now engaged in a combination and conspiracy in restraint of interstate and foreign trade and commerce in sanitary enameled iron ware, whereby said trade and commerce is being and is now restrained, in that all competition between the defendants as to the prices, discounts, terms, and conditions of sale of their products of sanitary enameled iron ware and the amount of their respective outputs in interstate and foreign commerce has been and is now being eliminated and destroyed by the so-called license arrangement hereinabove described, which was deliberately entered into and is now being observed by all the defendants for the express purpose of preventing and suppressing that competition.

Defendants are acting in concert to force into their combination the manufacturers of and dealers in sanitary enameled iron ware who are not parties to the combination or to drive them out of interstate and foreign trade and commerce. As a means to that end defendants have refused and are refusing to sell to jobbers or purchasers of sanitary enameled iron ware who have bought or are buying from the manufacturers who are not members of the combination, and defendants by agreement among themselves restrict the sales of their products in interstate commerce to jobbers who agree to deal only with the members of the combination.

Defendants have obtained by their combination control of 85 per cent of the interstate and foreign trade and commerce in sanitary enameled iron ware and thereby they have acquired the power to advance, and have advanced, the prices for which said products are sold in such commerce, and they intend further to advance said prices, by agreement and without competition, to the grave harm and injury of the people of the United States unless restrained by this honorable court.

The petitioner further charges that defendants have engaged and are now engaging in the combination hereinabove described and

have done and are doing all the acts referred to in this petition with the intent to monopolize the interstate and foreign trade and commerce in sanitary enameled iron ware and that they have attempted and are now attempting to monopolize said commerce by engaging and continuing to engage in the combination hereinabove described.

VI.

Jurisdiction.

Petitioner avers that the combination and conspiracy to restrain the interstate and foreign trade and commerce in sanitary enameled iron ware still exists; that the defendants are carrying out the same within the State and district of Maryland and that many of the things herein complained of have been committed in whole and others in part within said State and district and are now being committed therein; that the defendants A. Weiskittel & Co., and Anton Weiskittel and John D. Heise are located and doing business within said State and district and said individual defendants reside therein.

VII.

Prayer.

In consideration whereof, and inasmuch as your orator can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and relievable, your orator prays:

1. That it be adjudged that the defendants above named have entered into and are now engaged in a combination or conspiracy in restraint of trade and commerce among the several States and with foreign nations in sanitary enameled iron ware, such as the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" denounces as illegal; and that the defendants be enjoined and prohibited from doing anything in pursuance or in furtherance of the same within the jurisdiction of the United States.

2. That it be adjudged that the said patents, Nos. 633941, 949625, and 939918, now claimed to be held and owned by the defendant, Edwin L. Wayman, were acquired and are now held by him in virtue of such combination and conspiracy in restraint of trade and commerce among the several States and with foreign nations, and solely to effectuate the unlawful objects and purposes of the same, and that the said Wayman be enjoined from exercising or attempting to exercise any control, direction, supervision, or influence whatever over the interstate or foreign commerce business of the other defendants by virtue of his holding said patents or otherwise.

3. That it be adjudged that the manufacturers' license agreements and the jobbers' license agreements and the price list hereinbefore described were devised, planned, entered into, and are now being

observed and enforced solely for the purpose of enabling the defendants to carry into effect the objects and purposes of said unlawful combination and conspiracy in restraint of said interstate and foreign trade and commerce; that the said agreements and price list be declared illegal, and that the defendants and all and each of them and their officers, agents, servants, and employees be enjoined and prohibited from doing anything in pursuance or in furtherance of said manufacturers' license agreements and jobbers' license agreements, and from enforcing in any manner said agreements or any of the terms thereof and from adopting or enforcing said price list in interstate and foreign commerce.

4. That it be adjudged that the defendants have attempted and are now attempting to monopolize the interstate and foreign trade and commerce in sanitary enameled iron ware by means of the unlawful combination and conspiracy hereinbefore described, and more particularly by means of said manufacturers' license agreements and jobbers' license agreements, and that the defendants be enjoined from continuing said unlawful attempt to monopolize said trade and commerce by the means referred to or by any other means similar thereto.

5. That the defendants and all and each of them be enjoined and prohibited from entering into or continuing any similar combiation or conspiracy, and from agreeing, combining, conspiring, and acting together to prevent each and any of them from carrying on interstate and foreign trade and commerce in sanitary iron ware in competition with the others.

6. That the United States may have such other and further relief as the nature of the case may require and the court may deem proper in the premises.

To the end, therefore, that the United States of America may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant unto it writs of subpœna directed to the said defendants, Standard Sanitary Manufacturing Company, A. Weiskittel & Company, The Barnes Manufacturing Company, The Cahill Iron Works, Colwell Lead Company, The Day-Ward Company, The Humphreys Manufacturing Company, Kerner Manufacturing Company, The J. L. Mott Iron Works, McVay & Walker, The McCrum-Howell Company, The National Sanitary Manufacturing Company, Union Sanitary Manufacturing Company, United States Sanitary Manufacturing Company, L. Wolff Manufacturing Company, Wheeling Enameled Iron Company, Theodore Ahrens, Francis J. Torrance, E. L. Dawes, W. A. Myler, Anton Weiskittel, John D. Heise, C. H. Voegele, T. R. Barnes, F. H. Caldwell, J. J. Mahoney, Jesse T. Duryea, Bert O. Tilden, W. C. Winfield, A. G. Ward, S. N. Ford, Reid Carpenter, J. A. Frauenheim, Jordan L. Mott, Max Goebel, Thomas Walker, Alexander C. Walker, Lloyd G. McCrum, Howard G. Gates, Frank G. Borden, D. W. Davis, L. C. Huesman, E. V. Bringham, Charles Arrott, A. H. Cline, Jr., Ludwig Wolff, Herman Hoelscher, J. E. Wright, George W. Franzheim, Edwin L. Wayman, and each and every one of them, commanding

them and each of them to appear herein and answer the allegations contained in the foregoing petition and abide by and perform such orders and decree as the court may make in the premises.

GEORGE W. WICKERSHAM,
Attorney-General.
WILLIAM S. KENYON,
Assistant to the Attorney-General.
EDWIN P. GROSVENOR,
Special Assistant to the Attorney-General.
JOHN PHILIP HILL,
United States Attorney.

Edwin P. Grosvenor, being duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

EDWIN P. GROSVENOR.

Sworn to before me this 22 day of July, 1910.

ARTHUR L. SPAMER,
Clerk U. S. District Court for the District of Maryland,
By CHAS. W. ZIMMERMANN,
Deputy.

EXHIBIT 1.

Resolution.

MARCH 30, 1910.

Resolved, That the matter of license agreement and resale agreement be referred to a special committee of five (5); said committee to be elected at this meeting and to be known as the price and schedule committee, which committee shall be elected directly, should the motion to adopt this resolution prevail.

This committee shall interview the various manufacturers, obtaining their consent as evidenced by their signatures to the above-mentioned agreements. And when the consent of 85 per cent of the production is had, the agreements shall become binding and effective.

The committee is authorized to levy a special assessment equal to the amount of one quarter's dues as now paid into the association. The proceeds of said special assessment to be used for the purpose of defraying the necessary expenses incurred in carrying into effect the object for which this convention was called.

The undersigned agree to the above conditions and in so append-

ing their signatures hereby agree to give their prompt cooperation to the matter in question.

Witness their hands and seals of the parties hereto:

THE CAHILL IRON WORKS,
Per F. H. CALDWELL, *Pres.*
Per E. L. WAYMAN.
THE DAY WARD CO.,
Per A. G. WARD, *V. P.*
BLAIRSVILLE ENAMELED WARE CO.,
F. D. COATS, *Prest.*
UNITED STATES SANITARY MFG. CO.,
C. F. AVIOTT, *Prest.*
THE J. L. MOTT IRON WORKS,
E. HAMMANN.
(Subject to confirmation or revocation by our general manager, John Reid.)
THE BARNES MFG. CO.,
F. R. BARNES, *Sec'y & Gen'l M'g'r.*
STANDARD SANITARY MFG. CO.,
By FRANK J. TORRAND, *V. Pres't.*
WHEELING ENAMELED IRON CO.,
By J. E. WRIGHT, *Pres.*,
Per E. L. WAYMAN.
L. WOLFF MFG. CO.,
HERMAN M. HOELSCHER, *Sec'y.*
NATIONAL SANITARY CO.,
F. G. BORDEN, *Pres.*
A. WEISKITTEL & SON CO.,
ANTON WEISKITTEL.
THE McCRUM-HOWELL CO.,
HOWARD T. GATES, *Sec'y.*
THE HUMPHREYS MFG. CO.
A. I. LAING.
UNION SANITARY MFG. CO.,
By C. E. GATES.
CLYMER MFG. CO.,
W. A. GUTHRIE, *Pres.*

EXHIBIT 2.

Resolution.

Whereas, a proposition is pending for a license agreement and a resale price for the benefit of the jobbing trade, and

Whereas, long-term contracts are a menace to said proposition,

We, the undersigned, manufacturers of enameled ware, hereby agree to take no orders for delivery beyond May 31, 1910.

This agreement is not binding upon the signers unless all mem-

bers of the Enameled Ware Manufacturers' Association are parties thereto and append their signatures.

The within is agreed to.

UNION SANITARY MFG. CO.,
By C. E. GATES.
L. WOLFF MFG. COMPANY,
HERMAN M. HOELSCHER, *Sec'y.*
THE DAY WARD CO.,
By A. E. WARD, *V. P.*
THE UNITED STATES SANITARY MFG. CO.,
A. H. CLINE, JR., *Sec'y.*
THE CAHILL IRON WORKS,
By F. H. CALDWELL, *Pres.*
BLAIRSVILLE ENAMELED WARE CO.,
F. D. COOK, *Pres't.*
A. WEISKITTEL & SON CO.,
ANTONI WEISKITTEL.
THE McCRUM-HOWELL CO.,
HOWARD T. GATES, *Sec'y.*
THE BARNES MFG. CO.,
F. R. BARNES, *Sec'y & Gen'l M'g'r.*
THE HUMPHREYS MFG. CO.
A. J. LAING.
CLYMER MFG. CO.,
W. A. GUTHRIE, *Pres.*
NATIONAL SANITARY MFG. CO.,
F. G. BORDEN, *Pres.*
THE J. L. MOTT IRON WORKS,
E. HAMMANN.
STANDARD SANITARY MFG. CO.,
By FRANK J. TORRAND.
WHEELING ENAMELED IRON CO.,
By J. E. WRIGHT,
Per E. L. WAYMAN.
KERNER MFG. CO.,
J. A. FRAUENHEIM, *Pres't.*

EXHIBIT 3.

Memorandum of Agreement.

We hereby agree to execute with E. L. Wayman of the city of Pittsburg, as licensor, on or before April 15th, 1910, a license agreement for the manufacture of sanitary enameled ware under the following United States letters patent:

"Various patents covering pneumatic dredgers."
(To be enumerated in detail.)

and such additional patents as may come into his possession, upon the terms, conditions, etc., as hereinafter stated or provided for:

1. The license agreement to cover the following schedules of enameled ware.

Schedule 1. 5-year guaranteed baths.
Schedule 2. 2-year guaranteed baths.
Schedule 3. All other grades of baths.
Schedule 4. Small ware, lavatories, etc., and R. R. sinks.
Schedule 5. Flat rim sinks.
Schedule 6. Competitive lavatories 552 to 562 inclusive 565 and 535.

2. The amount of royalty to be as follows: $5 per day per furnace in operation with a rebate of 90 per cent beginning with the 1st month of the 2nd period and monthly thereafter, if the terms of the license have been complied with.

3. For each violation of the price regulations of the license agreement we agree to forfeit a sum equal to the amount of the shipment in question, and such other penalties as may be agreed on.

4. The selling prices to the jobbers to be established through the licensor by a price committee appointed by the various manufacturers.

5. The resale prices to the jobber, taking into consideration the rebate for observance of buying and selling regulations, shall be figured as follows:

High-grade goods, 25 per cent above jobbers' cost.
Competition goods, 16⅔ per cent above cost.

6. The rebates to jobbers shall be as follows:

10 per cent payable at end of period for strict observance of agreements, the details of the manner in which the rebates shall be made, to be determined.

7. The length of the rebate periods shall be 3 months beginning April 15, 1910, with the exception of the first period, which shall end July 1.

8. The license agreement and resale prices shall become effective April 15 and the agreement to be executed between the manufacturers and jobbers shall contain a clause to the effect that all material purchased or on hand previous to the above date shall be sold at the resale prices that may be established.

9. The details of contract forms between the manufacturers and the licensor shall be drawn up by the licensor and submitted for approval at the next special meeting to be held in New York City.

10. The licensor will also submit the same covering agreement between the manufacturers and jobbers.

11. The following "preferential discounts" from the selling prices established by the licensor will be allowed the various manufacturers on sales to jobbers only:

Schedule 1. 5-year guaranteed baths.
Schedule 2. 2-year guaranteed baths.
Schedule 3. All other grades of baths.
Schedule 4. Small ware—lavatories, etc., and R. R. sinks.
Schedule 5. Sinks, flat rim.
Schedule 6. Competitive lavatories—552-562 inclusive 565 and 535.

SCHEDULES.

Manufacturers.	1.	2.	3.	4.	5.	6.
	Per ct.	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*
Standard	None.	None.	None.	None.	None.	None.
Wolff	None.	None.	None.	None.	None.	None.
U. S.	None.	None.	None.	None.	None.	None.
Kohler	None.	None.	None.	None.	None.	None.
Barnes	None.	None.	None.	None.	None.	None.
Cahill	None.	None.	None.	None.	None.	None.
Mott	None.	None.	None.	None.	None.	None.
Union	5	2½	None.	2½	None.	None.
Colwell	5	2½	None.	2½	None.	None.
Clymer	5	2½	None.	2½	None.	None.
Blairsville	5	2½	None.	2½	None.	None.
McVey & Walker	5	2½	None.	2½	None.	None.
Weiskittel	5	2½	None.	2½	None.	None.
National	5	2½	None.	2½	None.	None.
Iron City	5	2½	None.	2½	None.	None.
Humphreys	5	2½	None.	2½	None.	None.
Day-Ward	5½	2½	None.	2½	None.	None.
McCrum-Howell	5	2½	None.	2½	None.	None.
Wheeling	5	2½	None.	2½	None.	None.

12. The length of time for which the License Agreement will be entered into and such other details as may be necessary for the perfection of the arrangement to be determined at the next meeting of the various manufacturers.

(Signed) THE McCRUM-HOWELL CO.
LLOYD G. McCRUM, *Pres't.*
BLAIRSVILLE ENAMELED WARE CO.
A. W. CHIPMAN, *Treas.*
NATIONAL SANITARY MFG. CO.
F. G. BORDEN, *Pres.*
THE BARNES MFG. CO.
F. R. BARNES, *Sec'y and Gen'l M'g'r.*
THE HUMPHREYS MFG. CO.,
By REID CARPENTER, *Treas.*
UNION SANITARY MFG. CO.,
Per A. E. GATES,
2nd Vice-Pres'd't & Gen'l M'g'r.
WHEELING ENAMELED IRON CO.
J. E. WRIGHT, *Pres't.*
STANDARD SANITARY MFG. CO.,
By FRANCIS J. TORRENCE, *V. Pr's't.*
L. WOLFF MANUFACTURING CO.
HERMAN M. HOELSCHER, *Sec'y.*
UNITED STATES SANITARY MFG. CO.,
By A. H. CLINE, JR., *Sec'y.*
ANTON WEISKITTEL & SON CO.,
By ANTON WEISKITTEL.

EXHIBIT 4.

[*Copy of Letter Sent by Wayman to all Manufacturers of Sanitary Enameled Ironware.*]

Edwin L. Wayman, 1509 Arrott Building.

PITTSBURG, *April* 16, 1910.

The price and schedule committee created at the meeting held in New York City, for the purpose of concluding the license and resale agreements, have just completed a special session held at Mount Clemens, Mich., beginning April 8 and ending April 14.

All the details of the license agreement and jobbers' agreement were thoroughly gone into and considered, every paragraph being carefully weighed; the committee making such additions or eliminations as they considered advisable.

Some changes were made in the arrangement of the schedules as you will note by the attached copy as well as some changes in the differentials. All members who had suggestions to make or those whom the committee desired to see, appeared before them and after going into all details and bringing up every possible question they went away entirely satisfied after having presented the committee with letters, several of which are given below:

"We hereby accept your proposition as to a license agreement under dredger patents by which we are permitted to use said patents, and for the use of which we agree to pay you as per terms of said license agreement at the rate of $5 per day per furnace in operation, less such rebates that you may hereafter decide upon; it being understood that all licensees shall be upon the same uniform schedule of prices per furnace and the same uniform charge and rebate. We further agree to maintain any and all stipulations and provisions set forth in the schedules and also to the different differentials established for our company as shown in the attached sheet."

"After having met with the committee and gone into the matter very carefully, we have given it due consideration and in the matter of harmony we will waive all demands which we made in our previous letter as to schedule, and will agree to manufacture all ware which we make under one of the three dredger patents, and we will also agree to the schedule of differentials in prices as submitted by your committee, and trust that our action will enable you to harmonize other interests."

The committee will hold additional meetings Tuesday April 19 at Pittsburg, and Thursday, April 21, at New York City, which meetings are believed will finish all the preliminaries. You may, therefore, expect to receive a notice calling a general meeting to be held in New York City during the first week in May for the purpose of executing the final license agreement papers, which will put this and the resale proposition into effect on June 1, which date is being expected and insisted upon by the jobbers throughout the country. The papers you will be asked to sign at this meeting will

not be subject to any further changes. They embrace the best suggestions made to the committee, have been passed on by the best legal talent in the country and it will not be feasible to make any additional changes in order to meet the ideas of the attorneys of the individual companies. Will you therefore, come prepared to sign or bring such principals with you that have authority to conclude the matter?

Yours very truly,

E. L. WAYMAN.

The following "preferential discounts" from the selling prices established by the licensor will be allowed the various manufacturers on sales to jobbers only.

Schedule 1. 5-year guaranteed baths.
Schedule 2. 2-year guaranteed baths.
Schedule 3. All other grades of baths.
Schedule 4. Small ware, lavatories, etc.
Schedule 4½. R. R. sinks, slop sinks, sink backs, drain boards, factory sinks, urinals, hoppers, laundry.
Schedule 5. Sinks, flat rim.
Schedule 6. Competitive lavatories, 558, 559, 561, 562.
Schedule 7. Closet tanks, high and low.

SCHEDULES.

Manufacturers.	1.	2.	3.	4.	4½.	5.	6.	7.
	Per ct.	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*	*Per ct.*
Standard	None.	None.	None.	None.	None.	None.	None.	None.
Wolff	None.	None.	None.	None.	None.	None.	None	None.
U. S	None.	None.	None.	None.	None.	None.	None.	None.
Kohler	None.	None.	None.	None.	None.	None.	None.	None.
Barnes	None.	None.	None.	None.	None.	None.	None.	None.
Cahill	None.	None.	None.	None.	None.	None.	None.	None.
Mott	None.	None.	None.	None.	None.	None.	None	None.
Union	5	None.	None.	2½	2½	None.	None.	None.
Colwell	5	2½	None.	2½	2½	None.	None.	None.
Clymer	5	2½	None.	5	5	2½	2½	2½
Blairsville	5	2½	None.	5	5	2½	2½	2½
McVey & Walker	5	2½	None.	5	5	2½	2½	2½
Kerner	5	2½	None.	5	5	None.	2½	None.
Weiskittel	5	2½	None.	2½	2½	None.	None	None.
National	5	2½	None.	2½	2½	None.	None.	None.
Humphryes	5	2½	None.	2½	2½	None.	None.	None.
Day-Ward	5	None.	None.	2½	2½	None.	None.	None.
McCrum-Howell	5	2½	None.	2–5	2½	None.	None.	None.
Wheeling	5	2½	None.	2½	2½	None.	None.	None.

The above "preferential discounts" shall not apply on sales to the plumber when made either by the jobbers or direct by the manufacturers.

All makes of goods shall be sold to the plumber at the resale prices that may be established in the sheets.

EXHIBIT 5.

Agreement.

This agreement made this 4th day of May, 1910, by and between Edwin L. Wayman, of Pittsburg, Allegheny County, Pennsylvania, party of the first part, and the Standard Sanitary Manufacturing Company, a corporation organized and existing under the laws of the State of New Jersey, having a place of business at Pittsburg, in said county and State, party of the second part,

Witnesseth: That whereas the party of the second part is the owner of the entire right, title and interest in and to patent No. 633,941 to James Arrott, dated September 26, 1899, for dredger for pulverulent material;

And whereas the party of the first part desires to secure the exclusive right, title and interest in and to said letters patent and invention;

Now, therefore, be it known that the parties have agreed as follows:

First. The party of the second part hereby agrees that it will assign, sell and set over unto the party of the first part, its entire right, title and interest in and to said letters patent and invention, for and in consideration of a cash payment by the party of the first part, to be hereafter agreed upon, and for and in consideration of the following covenant on the part of the party of the first part.

Second. The party of the first part, for and in consideration of the said assignment, agrees that the party of the second part shall, at the expiration of two years from the date hereof, have the right to request, if it shall so desire, a reassignment to it of the said patent; and further agrees if at any time after the expiration of the said period, the party of the second part shall request such reassignment, that he will at once, and without further consideration, execute and deliver any and all papers necessary to effect such reassignment.

In witness whereof, the party of the first part has affixed his hand and seal the day and year first above written, and the party of the second part has caused these presents to be executed by its vice-president and attested by its secretary.

[SEAL.] EDWIN L. WAYMAN.

STANDARD SANITARY MFG. CO.,

By FRANCIS J. TORRANCE,

Vice-President.

Attest:

W. A. MYLER, *Secretary.*

EXHIBIT 6.

2–392.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

Received and recorded on the 2d day of June, 1910, in Liber X, 84, page 61 of Transfers of Patents.

In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed.

(Patent Office—United States of America.)

E. B. MOORE,
Commissioner of Patents.

Exd.
E. H. G.

6—1697.

Assignment.

Whereas, the Standard Sanitary Manufacturing Company, a corporation organized and existing under the laws of the State of New Jersey, and having a place of business at Pittsburgh, Pa., is the owner of all the right, title and interest in and to the following letters patent, viz:

Pat. No. 633,941; date, Sept. 26th, 1899; inventor, James Arrott; title, dredger for pulverulent material.

And whereas, Edwin L. Wayman, a resident of Pittsburg, in said county and State, desires to acquire all right, title and interest in and to said patent, and in and to the invention covered, or intended to be covered, thereby;

Now, therefore, be it known, that for and in consideration of the sum of ten thousand dollars ($10,000) by the said Edwin L. Wayman in hand paid, the receipt of which is hereby acknowledged, the Standard Sanitary Mfg. Co. aforesaid has assigned, sold, and transferred, and by these presents does assign, sell and transfer, unto the said Edwin L. Wayman, the entire right, title and interest in and to said letters patent and invention, the same to be held and enjoyed by the said Edwin L. Wayman, his heirs, executors, administrators and assigns, as fully and completely as the same would have been held and enjoyed by the said Standard Sanitary Mfg. Co. had this sale and assignment not been made.

In witness whereof, the Standard Sanitary Mfg. Co. has caused these presents to be signed by its vice-president and attested by its secretary, this fourth day of May, 1910.

STANDARD SANITARY MFG. CO.,
By FRANCIS J. TORRANCE,
Vice-President.

Attest:
W. A. MYLER, *Secretary.*

EXHIBIT 7.

United States Patent Office.

James W. Arrott, Jr., of Allegheny, Pennsylvania—Dredger for Pulverulent Material.

Specification forming part of Letters Patent No. 633,941, dated September 26, 1899—Application filed March 21, 1899—Serial No. 709,945. (No model.)

To all whom it may concern:

Be it known that I, James W. Arrott, Jr., a citizen of the United States, residing at Allegheny, in the county of Allegheny and State of Pennsylvania, have invented certain new and useful Improvements in Dredgers for Pulverulent Material; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

This invention has relation to articles used for sifting and distributing powdered enameling material on the surface of bathtubs and other vessels, commonly known to the trade as "dredgers."

The ordinary dredger consists simply of a sieve or other screen of proper mesh having a handle of convenient length by which it is held and manipulated. As the pulverulent material does not freely pass through the sieve or evenly distribute itself spontaneously, it is necessary in dredging to continually agitate the dredger with the hand or with some instrument held in the hand by tapping or striking the dredger or by striking the dredger against the edge of the article to be enameled. This renders the labor of dredging or sifting very tiresome and slow and requires considerable skill in manipulating the dredger so as to insure an even delivery of the enameling material.

The object of this invention is to provide an automatic tapper or agitator which will deliver a succession of rapid blows against the side or end of the dredger and while relieving the workman of a great deal of labor causes the pulverulent material or powder to be evenly distributed and to be uniformly discharged. The device which I employ for this purpose is preferably a pneumatic hammer, the piston or plunger of which is elongated and fitted to the hollow handle of the dredger, so as to reciprocate within the latter and strike the end or side of the dredger with every forward stroke.

In the accompanying drawings, Figure 1 is a longitudinal sectional view of a dredger constructed according to my invention, and Fig. 2 is a top view of the same.

A designates the sieve or sifter, consisting of a box-like receptacle or trough having a wire-cloth screen at the bottom, through which the enameling material is shaken.

B designates a tubular handle consisting of a section of pipe attached to the end of the sifter.

C designates the body or casing of the pneumatic hammer, coupled to the end of the handle and of any suitable construction.

The piston *a* is either extended through the handle or is connected to a rod *d*, which operates in unison with the piston and which may be formed with enlargements at the ends to fit the bore of the handle and the end of the casing. The end of the handle next to the dredger is plugged to receive the stroke of the rod or piston. The air-tube F, leading from a compressed-air reservoir G, which is preferably flexible, is coupled to the outer end of the casing, and a suitable valve E is provided within easy reach of the workman to control the admission of air and regulate the force of the blow.

By the use of this device the operator is enabled to distribute and deposit the enamel more quickly and evenly and has the use of both hands to carry and manipulate the dredger, relieving him of a great deal of hard work and enabling him to turn out more work in a given time than is possible by the use of the present style of dredger.

I am aware that jarring or vibrating devices have been used in stationary apparatus used for sifting materials, and I disclaim any application of my invention to such purposes; but in the operation of the application of enamel in the powdered form the dredger or sifter has always been carried by the operator in one hand, while the necessary jar to produce sifting was communicated either to the handle of the sifter or to the sifter itself by some instrument in the other hand, or in some instances the sifter is held in both hands by one operator, while an assistant produced the necessary jar to cause sifting, and it is to this class of apparatus and operations that my invention relates and applies.

The pneumatic hammer forming part of the agitator is of the ordinary and well-known construction in which the piston has a rapid reciprocating motion automatically produced by the action of compressed air.

Having thus described my invention, what I claim as new is—

1. A dredger or sifter consisting of a screen or sieve and a supporting-handle, in combination with a pneumatic agitator attached to the dredger and adapted to vibrate the sieve substantially as described.

2. A dredger or sifter consisting of a sieve and a handle in combination with an automatic agitator secured to and carried by the dredger and adapted to agitate or vibrate the same, substantially as described.

3. A dredger or sifter comprising a sieve and handle and an automatic agitator secured thereto with means for controlling the operation of said agitator, substantially as described.

In testimony whereof I affix my signature in presence of two witnesses.

JAMES W. ARROTT, JR.

Witnesses:
GEO. W. CRAIG.
E. F. GREGG.

Form No. 100. 5-3-10.

EXHIBIT 8.

License Agreement.

This agreement, made in duplicate this — day of ——, 191–, between Edwin L. Wayman, a resident of the city of Pittsburg, State of Pennsylvania (hereinafter called the "Licensor"), party of the first part, and —— ——, a corporation duly organized and existing under and by virtue of the laws of the State of — (hereinafter called the "Licensee"), party of the second part.

Witnesseth:

That whereas, the said Wayman owns or controls or has the right to grant licenses under certain letters patent pertaining to the manufacture of sanitary enameled iron ware, enumerated in "Schedule of Patents," hereto annexed, and

Whereas the Licensee is desirous of acquiring a license under said letters patent of the character and upon the terms and conditions herein set forth;

Now, therefore, for and in consideration of the covenants of this agreement, the parties hereto agree as follows:

1. The Licensor hereby grants to the Licensee, subject to the provisions hereinafter contained, a nonexclusive license to practice in the manufacture of sanitary enameled iron ware, the processes patented in said several patents, to make and use in such manufacture the machines and devices patented in said patents and to use and sell goods so made; the said license being nonassignable and nontransferable except to successors to substantially the entire good will and business of the Licensee, and this license shall be available for the Licensee and its successors only so long as it or they have not, prior to the date hereof, been engaged in the manufacture of sanitary enameled iron ware.

Claims.

2. The Licensor hereby agrees to suspend his claims against the Licensee and its customers or patrons for damages or profits which he may be entitled to receive for any claims for any past infringement of said letters patent by said Licensee, as long as said Licensee continues to perform all of its obligations under this contract.

3. So long as the Licensee operates under this license or any renewal thereof and keeps and performs all of the obligations of said license herein contained, the Licensor agrees not to bring action against said Licensee because of its use of any machines, method or processes now or heretofore used by said Licensee in the manufacture of enameled ware, and to waive any and all claims under any letters patent on any machines, devices, or processes now in use by said Licensee, and to grant to said Licensee full use and enjoyment thereof.

Royalties.

4. For the use of the various patents enumerated in "Schedule of Patents," hereto annexed, the Licensee shall pay on the fifth day of each month a royalty amounting to five ($5.00) dollars per day for each furnace in operation during the preceding month.

This payment shall be made to the Licensor at his place of business in Pittsburgh, Pa., by cash or other acceptable remittance, and in determining the amount of this royalty each and every one of the furnaces owned by the Licensee shall be considered as in operation each day, unless the said furnace or furnaces shall be shut down for more than a period of six (6) consecutive working days. In case any of the furnaces are thus shut down for more than six (6) consecutive working days, the Licensee shall be entitled to a diminuation of his license payment at the rate of five ($5.00) dollars per working day for the number of days shut down.

In order to determine the amount of actual license payment, together with the remittance hereinbefore provided for payment of royalty, the Licensee shall send to the Licensor a sworn statement, which will be duly verified under oath by some representative of the Licensee, designated by the Licensor showing the number of furnaces owned by the Licensee at the beginning of the month which the report is intended to cover and the number of days which such furnaces have been operating consistent with the provisions of the foregoing section of this license.

Preferential Discounts.

5. This agreement is entered into with the understanding that the Licensee has the privilege of quoting to jobbers only the following additional discounts from the regular selling prices to the jobbers as established by the Licensor. These additional discounts when given, shall appear on the invoices rendered to the jobber.

	Discounts.
Schedule No. 1. 5-year guaranteed baths and receptors...	.....
Schedule No. 2. 2-year guaranteed baths.....	.....
Schedule No. 3. All other grades of baths.....	.....
Schedule No. 4. Small wares, lavatories, etc.....	.....
Exceptions: Lavatories, similar to Plate Nos. (Standard) P-558, 559, 561 and 562.....	.....
Schedule No. 4½. Roll rim sinks, slop sinks, sink backs and ends, drain boards, factory and wash sinks, urinals and urinal ranges, closet bowls and closet ranges, hoppers, hopper and trap combinations, hopper trays, and laundry trays	.....
Schedule No. 5. Sinks, flat rim, square and round-cornered, kitchen, half-circle and flat rim sink combinations	.....
kitchen, half-circle and flat rim sink combinations....	.....
Schedule No. 6. Closet tanks, high and low pattern.....	.....

Prices.

6. The Licensor agrees that he will employ a commission of six (6) persons, of which he is to be one and to act as chairman thereof, five of whom shall be designated by a majority of the parties holding licenses similar to this license, which commissions shall have supervision of all the relations and transactions between the parties hereto under this agreement, but it is understood that where a member of said commission, or his company, shall be directly interested in any question of a violation of the license to be decided by the said commission, said member shall be disqualified and a temporary member shall be appointed in his place by the remaining members of the commission.

All terms and conditions relative to prices and discounts now established by the Licensor and set forth in the annexed schedules and made a part hereof, shall remain in force and effect until other terms, conditions and preferential discounts are substituted therefor by the Licensor, which substitution can only be made by him with the approval of a majority of the members of the commission, hereinbefore prescribed. Notice of such changes and substitutions shall be given from time to time in writing by the Licensor to the Licensees. The Licensee covenants to adhere to and maintain such terms, conditions, regulations, prices and preferential discounts as may be established by the Licensor from time to time, and the Licensee further agrees to sell no "seconds" or "Bs" covered by Schedules 4, 4½, 5 and 6.

Royalty Rebates.

7. If at the end of the fourth month of the first year (said year beginning June 1, 1910), it shall appear that the Licensee has during the first month complied with all the terms of this agreement, the Licensor shall return the Licensee the following rebate from the royalties paid for said license for said first month's royalties, to wit: 80 per cent of the amount originally paid by the Licensee.

8. At the termination of each succeeding month of the said license, if it shall appear that the Licensee has fully complied with the terms of this agreement during the second preceding month, the Licensor shall make a similar rebate in respect to the royalties paid by the Licensee during the second preceding month.

9. In case of failure on the part of the Licensee to comply in any particular with the terms of this agreement during any month, the Licensor may withhold any and all unpaid rebates and declare the same forfeited as penalty for such violation and shall at once notify the Licensee to that effect.

Export.

10. The restrictions herein contained as to the prices at which sanitary enameled iron ware is to be sold shall not apply to sanitary

enameled iron ware sold and exported to foreign countries. Such sales must be proved bona fide to the Licensor.

11. The books of the Licensee shall be open to inspection, at all reasonable times, by the Licensor, by an accountant appointed by the Licensor, not associated in any manner with any of the Licensees or jobbers.

Validity of Patents.

12. The Licensee admits the validity of said several patents enumerated herein, for the purpose of this agreement and license only, and it is further agreed that upon the termination of this agreement and license for any cause, the Licensee shall not be estopped to deny the validity of the said patents or any of them. The Licensor agrees that he will, upon the written request of at least three-quarters in number of the Licensees at any time holding licenses similar to this license, use all legal and equitable means to protect the Licensee in the full use and enjoyment of the rights under this agreement and license from all non-licensed parties using any of said machines, processes or devices, or from any sales infringing said patents by customers or any such parties, either by suits or by bringing them under a similar license. If, however, the Licensor refuses to take such action against such non-licensed parties, other customers, or users of such non-licensed goods, for ninety days after being requested so to do, as before provided, this license shall be voidable at the election of the Licensee communicated in writing to the Licensor, and the Licensee thereafter shall be released from all obligations hereunder, and shall not hereafter be estopped to deny the validity of said patents or any of them.

Labels.

13. No goods manufactured under this license shall be sold unless they bear a registered label (except where otherwise specified), owned by the Licensee and in addition thereto a license tag or label approved by the Licensor, which license tag or label shall be placed in a visible position on all goods made hereunder and sold by the Licensee.

14. This agreement is binding upon the parties hereto, and the successor and assigns of each of them, and shall continue in force for a period of two years from the date hereof unless previously terminated as herein provided.

15. This agreement, however, may be canceled by the Licensor by written notice upon repeated breaches by the Licensee of any of the covenants herein contained.

In witness whereof, the parties hereto have executed these presents the day and year above written.

SCHEDULE OF PATENTS.

Patent No.	Date.	Inventor.	Title.
633941	Sept. 26, 1899	James Arrott.....	Dredger for pulverulent material.
949625	Feb. 15, 1910	E. Ditheridge.....	Pneumatic sieve.
939918	Nov. 9, 1909	William Lindsay....	Enameling powder distributor.

EXHIBIT 9.

[NOTE.—This contract must be executed by the purchaser in order to purchase licensed sanitary enameled iron ware.]

Jobber's License Agreement.

This agreement, made this — day of ——, 19—, between the —— ——, a corporation (hereinafter called the Company), and —— —— State of —— (hereinafter called the purchaser).

Witnesseth: Whereas the company is licensed under certain United States Letters Patent relating to sanitary enameled ware and processes and apparatus used in the manufacture thereof, which said letters patent are enumerated as follows:

SCHEDULE OF PATENTS.

Patent No.	Date.	Inventor.	Title.
633941	Sept. 26, 1899	James Arrott.....	Dredger for pulverulent material.
949625	Feb. 15, 1910	E. Ditheridge.....	Pneumatic sieve.
939918	Nov. 9, 1909	William Lindsay....	Enameling powder distributor.

And whereas, the purchaser desires to purchase from the company sanitary enameled ironware embodying or made in accordance with said inventions, and to obtain licenses to sell such ware to others, and the company is willing to sell sanitary enameled ironware to the purchaser, and to license it for resale on the following terms and conditions:

Now, therefore,

1. The company agrees to sell and the purchaser agrees to buy for a period of time beginning June 1, 1910, and ending December 31, 1910, —— sanitary enameled ironware at the following discounts (Insert label.) from the prices given in the various schedules:

Discounts and Terms.

Articles.

[Discounts from resale prices established by the licenser. (To be allowed on invoices by the manufacturer.)]

	Per cent.
Schedule No. 1 Five-year guaranteed baths, foot, pool, sitz and child's, and receptors	7½
Schedule No. 2. Two-year guaranteed baths	5
Schedule No. 3. All other grades of baths	5
Schedule No. 4. Small wares, drinking fountains, lavatories, etc.	7½
Exceptions: Lavatories, similar to plates (standard) P-558, 559, 561 and 562	5
Schedule No. 4½. Roll-rim sinks and combinations, slop sinks, sink backs and ends, drain boards, factory and wash sinks, sink and tray combinations, laundry trays, closet bowls and urinals	5
Schedule No. 5. Flat-rim sinks and combinations, square and round corner kitchen, half circle, corner, slop sinks, slop hoppers, wash-bowls, trap standards, and grease traps	5
Schedule No. 6. Tanks, closet and urinal, high and low pattern.	5

Terms: Net 60 days or 2 per cent for cash 10th of month following shipment.

Deliveries.

2. Goods will be sold to the purchaser, f. o. b. cars where factory is located, at the prices given in the resale sheets for the various zones (subject to the discounts and rebates named) with full freight allowed on shipments of 200 pounds and over (subject to the freight tariff regulations herein provided for) to the list of cities named in the various zones. To other points than those named, delivery can be made only on the basis of the purchaser being charged and paying freight from the nearest city named, based on the weights shown in the sheets and at the rates shown in the equalizing tariff schedule.

NOTE.—Goods may be shipped in mixed carloads to all points on, or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed carloads to points so provided for in the railroad tariffs and classifications.

Goods shall be resold by the purchaser at prices established and prevailing in the various zones into which the goods are shipped, regardless of the point of purchase.

Purchaser will be allowed carload prices in any quantity on shipments to the manufacturing and jobbing points specified. On ship-

ments to jobbing points, other than manufacturing points, carload or less carload prices will apply according to quantity.

General Conditions.

3. Prices or other regulations are effective the morning of the date appearing on the sheet.

4. The ware covered by the price sheets shall be invoiced by individual items, and it is not permissible to bill collectively several articles in a "Lump sum."

5. The various conditions respecting "Guarantees" under which the ware is purchased by the jobber, shall not be varied in the resale to the plumber.

6. The restrictions herein contained as to the prices at which sanitary enameled iron ware is to be purchased and sold, shall not apply to sanitary enameled iron ware sold and exported to foreign countries. Such sales must be proved bona fide to the licensor.

Rebates.

7. If all the conditions of this agreement have been complied with and you have confined your purchases to the licensed manufacturers, we will pay you rebates on such purchases as you have made from us as follows:

	Per cent.
Schedule No. 1. 5-year guaranteed baths, foot, pool, sitz, and child's and receptors	5
Schedule No. 2. 2-year guaranteed baths	5
Schedule No. 3. All other grades of baths	5
Schedule No. 4. Small wares, drinking fountains, lavatories, etc.	5
Exceptions: Lavatories, similar to plates (standard) P-558, 559, 561, and 562	5
Schedule No. 4½. Roll rim sinks and combinations, slop sinks, sink backs and ends, drain boards, factory and wash sinks, sink and tray combinations, laundry trays, closet bowls, and urinals.	5
Schedule No. 5. Flat-rim sinks and combinations, square and round cornered, kitchen, half circle, corner, slop sinks, slop hoppers, wash-bowls, trap standards, and grease traps	5
Schedule No. 6. Tanks, closet and urinal, high and low pattern	5

8. If your purchases of material, less returned goods, covered by the various schedules from the following manufacturers licensed under the patents enumerated hereinbefore:

Barnes Manufacturing Co., The	Mansfield, Ohio.
Cahill Iron Works, The	Chattanooga, Tenn.
Colwell Lead Co	New York.
Day-Ward Co., The	Warren, Ohio.
Humphreys Mfg. Co., The	Mansfield, Ohio.
Kerner Manufacturing Co	Pittsburg, Pa.

Mott Iron Works, The J. L.	New York City.
McVay & Walker	Braddock, Pa.
McCrum-Howell Co., The	New York City.
National Sanitary Mfg. Co., The	Salem, Ohio.
Standard Sanitary Mfg. Co	Pittsburg, Pa.
Union Sanitary Mfg. Co	Noblesville, Ind.
United States Sanitary Mfg. Co	Pittsburg, Pa.
Wolff Mfg. Co., L	Chicago, Ill.
Weiskittel & Son Co., A	Baltimore, Md.
Wheeling Enameled Iron Co	Wheeling, W. Va.

have aggregated sums as follows and if all the conditions of this agreement have been complied with the company will pay the purchaser rebates on such purchases as they have made from the company during the period ending December 31, 1910, as follows:

	Per cent.
$10,000	2½
$15,000	3
$20,000	3½
$25,000	4
$30,000	5

Rebates are payable only at the expiration of the period ending December 31, 1910, and after claims have been approved by E. L. Wayman, licensor, Arrott Building, Pittsburg, Pa.

Written application for rebate must be made at the close of the rebate period to E. L. Wayman, licensor, upon standard forms, which may be obtained from him for that purpose. Unless claim for rebate is presented within thirty days after the expiration of this agreement, the right to refuse to allow such rebate is reserved by the licensor named above.

If at the expiration of this contract, a similar contract is made between the parties hereto and the purchases under each contract are sufficiently large so that the aggregate of the purchases under both contracts are double the amounts named above, then the company will pay the percentage rebate named above on the entire amount of such purchases under both contracts, but it shall not be permissible to aggregate purchases made under more than two successive contracts to obtain any greater rebate than may be payable under the last of such two successive contracts.

9. The purchaser understands that the resale prices of all ware manufactured under the letters patent enumerated herein, as established from time to time by the company, must be maintained by all licensed sanitary enameled-iron ware manufacturers and by all jobbers and dealers and that sales by one jobber to another can not be made at any better prices than established in the sheets. The purchaser therefore agrees that he will observe and strictly maintain on all types and classes of ware the selling prices as they are set forth in the schedules, and will observe and strictly adhere to the rules and regulations as embodied in the price sheets and furnished as a part of this agreement, or as they may be embodied

in the price sheets issued hereafter and substituted by or under the authority of the licensor (E. L. Wayman) in place of those furnished herewith. Articles may be added to or removed from the scedules at any time; but in the event of such removal, the purchases to date of such removal will be considered as part of the amount on which rebate is estimated.

10. The purchaser also agrees during the life of this contract not to purchase, sell, advertise, solicit orders for, or in any way handle or deal in sanitary enameled ironware of any manufacturer not licensed under the letters patent enumerated herein, except with the express written permission of the licensor. Breach of any of the provisions of this agreement, or any failure to maintain and observe prices, rules or regulations shall give the Company, or E. L. Wayman, owner of the patents hereinbefore enumerated, an option immediately to cancel this contract, all unfilled orders and to withhold all rebates; and the purchaser is hereby expressly put on notice that in case of any such failure he can not thereafter obtain sanitary enameled ironware manufactured under the letters patent above enumerated from any of the licensed manufacturers.

11. As an added consideration for this agreement whereby the purchaser is to be sold goods manufactured under the patents hereinbefore named, the purchaser hereby agrees that as to all goods, wares and merchandise, which are manufactured under and in accordance with the patents hereinbefore named, the purchaser will only resell such goods now on hand, or already purchased by him, irrespective of by whom such goods have been manufactured, in accordance with the rules, terms, conditions, prices and regulations of sale which are herein established, or which may hereafter be established in accordance with the terms of this agreement, as specially set forth in paragraph 9 hereof.

12. This agreement does not become binding on the Company until accepted in writing at the foot hereof by the sales manager or his duly authorized representative located in the main sales office of the Company.

—— ——.

Accepted this — day of ——, 19—.

—— —— (Purchaser.)

—— —— (Company.)

By —— ——.

[This statement must be signed by both manufacturer and jobber, detached and filed promptly with E. L. Wayman, Arrott Building, Pittsburg, Pa.]

Dated —— —, 191–.

E. L. Wayman, Licensor, Arrott Building, Pittsburg, Pa.:

This is to certify that a "Jobber's license agreement" purchase contract has been executed between —— —— (manufacturer) and —— —— (jobber), (city and State) ——, at the following discounts (subject to the established rebates) from the resale prices established

by you or that may be established by you during the period ending December 31, 1910.

	Discounts.
Schedule No. 1. 5-year guaranteed baths, foot, pool, sitz and child's, and receptors	.....
Schedule No. 2. 2-year guaranteed baths	.....
Schedule No. 3. All other grades of baths	.....
Schedule No. 4. Small wares, drinking fountains, lavatories, etc	.....
Exceptions: Lavatories, similar to plates (standard) P-558, 559, 561, and 562	.....
Schedule No. 4½. Roll-rim sinks and combinations, slop sinks, sink backs and ends, drain boards, factory and wash sinks, sink and tray combinations, laundry trays, closet bowls and urinals	.....
Schedule No. 5. Flat-rim sinks and combinations, square and round corner kitchen, half circle, corner, slop sinks, slop hoppers, washbowls, trap standards and grease traps	.....
Schedule No. 6. Tanks, closet and urinal, high and low pattern	.....

(Signed) —— —— (*Manufacturer*),
By —— ——.
—— —— (*Jobber*),
By —— ——.

EXHIBIT 10.

Price List.

[Price list Edwin L. Wayman, 633,941, 949,625, 939,918, Pittsburg. "Licensed." Sanitary enameled iron ware, June 1, 1910.]

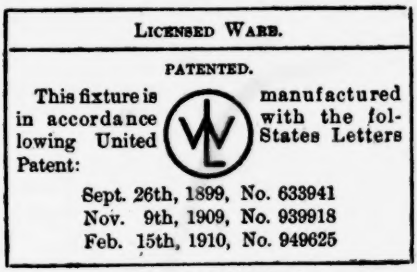
[Licensed.]

Sanitary Enameled Iron Ware.

The patented automatic enameling processes adopted by the licensed companies covers substantially all the ways in which sanitary enameled iron ware may be enameled economically and with durability and are essential to the production of ware of the highest quality.

That the ware made in accordance with these patented processes may be easily identified, each fixture after June 1, 1910, will bear the following label:

[Licensed label.]



(Enlarged reproduction.)

and its presence evidences that the best materials and processes have been employed in its manufacture.

Licensed sanitary enameled iron ware embodies all that is significant of quality and progress.

JUNE 1, 1910.

To licensed jobbers' salesmen:

This price list is the property of E. L. Wayman, Arrott Building, Pittsburg, and is loaned to you with the understanding that it is subject to recall at any time. The prices given herein are the selling prices I have established to plumbers on sanitary enameled iron-ware manufactured by the following companies, operating under patents owned by me and to whom I have granted licenses:

Barnes Manufacturing Co., The	Mansfield, Ohio.
Cahill Iron Works, The	Chattanooga, Tenn.
Colwell Lead Company	New York.
Day-Ward Co., The	Warren, Ohio.
Humphreys Manufacturing Co	Mansfield, Ohio.
Kerner Manufacturing Co	Pittsburg, Pa.
Mott Iron Works, The J. L	New York.
McCrum-Howell Co	New York.
McVay & Walker	Braddock, Pa.
National Sanitary Manufacturing Co	Salem, Ohio.
Standard Sanitary Manufacturing Co	Pittsburg, Pa.
Union Sanitary Manufacturing Co	Noblesville, Ind.
United States Sanitary Manufacturing Co	Pittsburg, Pa.
Wolff Manufacturing Co., L	Chicago, Ill.
Weiskittel & Son Co., A	Baltimore, Md.
Wheeling Enameled Iron Co	Wheeling, W. Va.

It is necessary for all licensed manufacturers to sell their product manufactured in accordance with these patents on the terms herein established and you are hereby notified that the license agreements executed by your company obligates it to resell the various licensed products at no better prices, terms, or other regulations than herein

established. As changes, additions, or eliminations occur, new sheets will be issued promptly.

E. L. WAYMAN.

Arrott Building, Pittsburg, Pa.

Classification.

Classification of Sanitary Enameled Ironware Products.

Schedule No. 1. 5-year guaranteed baths, foot, pool, sitz, and child's, and receptors.....
Schedule No. 2. 2-year guaranteed baths.....
Schedule No. 3. All other grades of baths.....
Schedule No. 4. Small wares, drinking fountains, lavatories, etc. Exceptions: Lavatories, similar to plates (standard) P-558, 559, 561, and 562.....
Schedule No. 4½. Roll rim sinks and combinations, slop sinks, sink backs and ends, drain boards, factory and wash sinks, sink and tray combinations, laundry trays, closet bowls and urinals.....
Schedule No. 5. Flat rim sinks and combinations, square and round corner kitchen, half circle, corner, slop sinks, slop hoppers, washbowls, trap standard, and grease traps.....
Schedule No. 6. Tanks, closet and urinal, high and low pattern .....

General Conditions.

Prices.—Prices or other regulations are effective the morning of the date appearing on the sheet.

All prices are for bare fixtures without fittings, except where specified.

Carload prices shall apply to shipments of enameled ware in carload lots in one delivery only, to one purchaser and paid for by one purchaser.

Lump sums.—The ware covered by the price sheets shall be invoiced by individual items, fixtures to be billed separately (less all fittings), and it is not permissible to bill collectively several articles in a "Lump sum."

Guarantees.—The various conditions respecting "Guarantees" under which the ware is purchased by the jobber shall not be varied in the resale to the plumber.

Deliveries.

Deliveries.—Goods will be sold to the purchaser f. o. b. cars where factory is located, at the prices given in the resale sheets for the various zones with full freight allowed on shipments of 200 pounds and over (subject to the freight tariff regulations herein provided for) to the list of cities named in the various zones. To other points than those named, delivery can be made only on the basis of the

purchaser being charged and paying freight from the nearest city named.

NOTE.—Goods may be shipped in mixed carloads to all points on or east of the western bank of the Mississippi River, Minneapolis to New Orleans and to the Atlantic seaboard, inclusive. To points west of the western bank of the Mississippi River, goods may only be shipped in mixed carloads to points so provided for in the railroad tariffs and classifications.

Goods shall be sold at prices established and prevailing in the various zones into which the goods are shipped, regardless of the point of purchase.

Purchaser (jobbers only) will be allowed carload prices in any quantity on shipments to the manufacturing and jobbing points specified. On shipments to jobbing points other than manufacturing points, carload or less carload prices will apply according to quantity.

[From jobber's stocks—Zones 1, 2, 3, 4, and 5.]

All shipments from jobber's stocks to other than jobbing points in zones 1, 2, 3, 4 and 5 shall be billed f. o. b. cars point of shipment.

If jobbers find it necessary on shipments from stock to nonjobbing points to equalize with other jobbing points, such equalizations shall be made on the basis of the weights given in the sheets and at the rates given in the equalizing freight tariff schedule.

[From jobbers' stocks—Zones 6, 7, 8, 9, 10 and 11.]

All shipments from jobbers' stocks to other than jobbing points in zones 6, 7, 8, 9, 10 and 11 shall be billed f. o. b. cars point of shipment with actual freight allowed to nonjobbing points.

[Direct shipments from factory—All zones.]

Shipments to other than jobbing points made direct from the factory on jobbers' orders, or sales made direct to plumbers by the manufacturers, shall be billed at the prevailing zone prices plus freight charges from the nearest jobbing point, based on the weights given in the sheets and at the rates given in the freight-equalizing tariff schedule.

[Freight zone (general)—Manufacturing and jobbing points.]

Car Load Zone 1 prices will be allowed purchaser (jobber only) and actual freight allowed on C. L. and L. C. L. shipments of 200 pounds and over to the following manufacturing and jobbing points:

Allegheny, Pa.
Baltimore, Md.
Chicago, Ill.
Cincinnati, Ohio.
Louisville, Ky.
Milwaukee, Wis.
Pittsburg, Pa.
Wheeling, W. Va.

The same conditions at zone 2 prices will apply on shipments to Chattanooga, Tenn.

Goods must be sold to the plumber at the quantity prices established in the Sheets.

(Here follows the body of the price list consisting of 276 printed pages.)

EXHIBIT 11.

(Letter Sent to the Jobbing Trade by Wayman.)

Edwin L. Wayman.

ARROTT BUILDING, PITTSBURG, *June* 3, 1910.

To the jobbing trade:

The sanitary enameled ironware industry has in the past been handicapped by the production and the marketing of quantities of "seconds," or defective goods, due to improper designs, manufacturing methods and equipment. Such goods have not been disposed of by the manufacturers as other than "seconds," but some unscrupulous purchasers have in a great many instances disposed of them by misrepresentation thereby causing the public who buy such goods to condemn sanitary enameled ironware to the detriment of the industry as a whole.

The basic object of the licensed manufacturers in adopting uniform methods of manufacture is to eliminate as far as possible the production and disposal of "seconds," thereby improving the general quality of their ware.

The patented automatic enameling processes adopted by the licensed companies cover substantially all the ways in which sanitary enameled iron ware may be enameled economically and with durability and are essential to the production of ware of the highest quality.

That the ware, made in accordance with these patented processes, may be easily identified, each fixture manufactured after June 1, 1910, will bear the following label:

(Enlarged reproduction.)

and its presence evidences that the best materials and processes have been employed in its manufacture.

Resale selling prices by jobbers become effective as follows: In and east of Missouri River points, June 6; west of Missouri River points to Pacific coast territory, June 7; Pacific coast territory, June 9.

Distribution and Resale of Licensed Sanitary Enameled Ironware.

To purchase licensed sanitary enameled ironware, during the period beginning June 6 and ending December 31, 1910, it is necessary for you to execute a jobbers' license agreement contract, sample of which is attached, with each of the licensed manufacturers with whom you may desire to deal. Copies for signature will be sent you in duplicate by each of the licensed manufacturers, the execution of which makes you a licensed distributor of sanitary enameled ironware. Licensed ware can not be sold to you, if you have not executed these contracts.

Prices.—The selling prices to the plumber are inclosed under separate cover in loose leaf form. From these prices you will receive the discounts and rebates named in the "Jobbers' license agreement," which constitute your profit.

Profits.—On the basis that the average jobber buys in carload lots and sells in less than carload lots the per cent of profit on the selling prices will be as follows:

	Difference between C. L. and L. C. L. prices in price sheets.	Discounts named in paragraph 1, jobbers' agreement.	Discounts named in paragraph 7, jobbers' agreement.	Quantity rebates named in paragraph 8, jobbers' agreement.	Total approximate per cent profit on selling prices.
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*	
Schedules 1 and 4	5½	7½	5	2½–5	19–21
Schedules 2, 3, 4½, 5, and 6	5½	5	5	2½–5	17–19

C. L. and L. C. L. prices.—In order to obtain the benefit of carload prices, the jobber must buy in car lots for one delivery only, except at "jobbing points" where manufacturers are located.

Shipments to these points will be invoiced at carload prices in any quantity. Less than carload shipments to all other jobbing points and nonjobbing points will be invoiced to you at the less than carload prices in the sheets (all subject to the discounts and rebates hereinbefore named).

In the resale to the plumber it is not permissible to take an order for a carload and ship out in small quantities at carload prices. The plumber is entitled to carload prices at any point only when a carload is actually delivered to one purchaser in one shipment and paid for as one shipment.

Deliveries.

[From jobbers' stocks, zones 1, 2, 3, 4 and 5.]

All shipments from jobbers' stocks to other than jobbing points in zones 1, 2, 3, 4 and 5, shall be billed f. o. b. cars point of shipment.

If jobbers find it necessary on shipments from stock to nonjobbing points to equalize with other jobbing points, such equalizations shall be made on the basis of the weights given in the sheets and at the rates given in the equalizing freight tariff schedules.

[From jobbers' stocks, zones 6, 7, 8, 9, 10 and 11.]

All shipments from jobbers' stocks to other than jobbing points in zones 6, 7, 8, 9, 10 and 11 shall be billed f. o. b. cars point of shipment with actual freight allowed to nonjobbing points.

[Direct shipments from factory—all zones.]

Shipments to other than jobbing points made direct from the factory on jobbers' orders, or sales made direct to plumbers by the manufacturers, shall be billed at the prevailing zone prices plus freight charges from the nearest jobbing point, based on the weights given in the sheets and at the rates given in the freight equalizing tariff schedule.

Boxing and Crating.

These charges will be made on all goods by the manufacturers and must be made by all jobbers in the resale at the prices given in the sheets. These prices are net (subject to the discounts and rebates only that are named in the "Jobbers' License Agreement."

The same applies to charges for drilling, decorating, and other miscellaneous items shown in the sheets.

Sales by Jobbers to Other Jobbers.

Sales by one jobber to another can not be made at any better prices than those established in the resale sheets.

Guarantees.

The various conditions respecting guarantees under which the ware is purchased by the jobber shall not be varied in the resale to the plumber. Particular attention is called to the practice that has been established in the past of labeling nonguaranteed baths with the jobber's guaranteed label. This practice will be considered a violation of the jobbers' license agreement.

Additional sheets will be issued as fast as possible on items not covered in the inclosed sheets.

The discounts herein named have been compiled with as much care and accuracy as would permit in the short time allotted to distributing these sheets to the jobbing trade, and you will confer a great favor by reporting promptly any apparent discrepancies or errors.

Yours truly, E. L. WAYMAN, *Licensor.*

EXHIBIT 12.

(*Copy of Letter Sent to Each Corporation Defendant by E. L. Wayman About May* 30, 1910.)

At the time you send out the jobbers' agreement contracts to your trade, copies of which I will furnish you this week, please write them the following letter without any change in the wording given:

Enclosed find copies in duplicate of contracts covering the purchase of licensed —— sanitary enameled iron ware for the period beginning June 1st and ending Dec. 31st, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware.

Yours truly,

(Signed) —— COMPANY,

Yours truly, E. L. WAYMAN, *Licensor.*

EXHIBIT 13.

(*Copy of Letter Sent to the Trade. See Exhibit* 12.)

[McVay & Walker, iron founders, manufacturers of porcelain enameled bath tubs, soil pipe and fittings, sinks, hoppers, etc. Corner Halket avenue and Ninth street. Established 1862. Telephone: P. & A. 312; Bell 170 Braddock.]

BRADDOCK, PA., U. S. A., *June* 4, 1910.

GENTLEMEN: We hereby withdraw all previous quotations, either verbal or written.

Inclosed find copies in duplicate of contracts covering the purchase of licensed McVay & Walker sanitary enameled iron ware for the period beginning June 1 and ending December 31, 1910. Kindly execute both copies and return one copy to us at once. It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware.

Yours truly,

McVAY & WALKER COMPANY.

EXHIBIT 14.

(*A Letter.*)

JUNE 10, 1910.

The Western Supply Co., St. Paul, Minn.

GENTLEMEN: Replying to your letter of the 7th, it is impossible for me to give you permission to continue buying goods from the J. M. Kohler Sons Company, Sheboygan, Wis. This company has been invited to execute a license agreement and use the patent process, but has not seen fit to do so. I would like to have them execute an agreement but if they will not it is impossible to concede to any of their customers the right to purchase their goods if the customers desire to purchase licensed ware.

I hope that you will take the matter up with them and try and convince them that they should manufacture goods in accordance with the other companies.

Yours very truly, E. L. WAYMAN.

EXHIBIT 15.

(*A Letter.*)

PITTSBURG, PA., *June* 9, 1910.

The American Plumbers Supply Co., Toledo, Ohio.

GENTLEMEN: We have your order calling for a B-210 sink, but as we have not as yet received your signed contract for the resale of licensed enameled ware, we can not execute this order owing to the fact that our contract with the Licensor, Mr. E. L. Wayman, prohibits our accepting any orders after June 6 except from jobbers having signed this contract. We regret to have to take this stand but we have no alternative in the matter whatever, as our contract with Mr. Wayman is very positive on this point.

Kindly sign and return the resale contract to us at your earliest convenience, so that we will not be delayed in shipping your order, and greatly oblige,

Yours very truly,

UNITED STATES SANITARY MFG. CO.,
A. H. CLINE, JR., *Secretary.*

EXHIBIT 16.

(*A Letter.*)

W—6181013—R.]

JUNE 18, 1910.

Chandler Pump Company, Cedar Rapids, Iowa.

GENTLEMEN: I am in receipt of your telegram of to-day stating that you do not feel justified in signing at present. I trust you will

see your way clear to execute this agreement within the next few days, as it covers a matter which is entirely for the jobbers' benefit. The Cedar Rapids Pump Company of your city have executed the agreement, and I hope you will cooperate immediately with your local competitors, which will be much more advantageous than a continuous cut market.

Will you not telegraph me upon receipt of this letter that you will execute the agreement, in order that the matter may be adjusted in your city at once.

Yours very truly, E. L. WAYMAN.

EXHIBIT 17.

(*A Letter.*)

Atlas Supply Co.

MUSKOGEE, OKLA., *June* 18, 1910.

J. M. Kohler Sons Co., Sheboygan, Wis.

DEAR SIRS: We just received the following telegram from Mr. E. L. Wayman, in reply to our inquiry relative to purchases from you, to wit:

If you will sign license agreement will authorize you to handle Kohler ware subject to resale terms for reasonable length of time, with understanding that you will at once decrease your purchases, and stock licensed ware, and further sale of it, and furnish me monthly statement of purchases from Kohler. Licensed manufacturers desire to give all assistance possible to jobbers in order that they may make a fair margin of profit and do not desire to inflict any hardships, but do believe they merit the support of all jobbers in this proposition. Southwest, Kansas City Pump, Young and Crane are supporting manufacturers. Reeves wires he has put resale into effect and intends to sign. Expect U. S. Water will sign to-day. Wire answer immediately.

(Signed) E. L. WAYMAN.

As yet we have not signed any agreements, but we have put the resale price into effect to-day. There are a great many things about the agreements that do not exactly agree with our notion of a square deal. After the jobber's stock is exhausted his profit will be uncertain, as it will all depend on the quantity he sells, and even were all to sell the maximum amount the profit would still be too small for us in this locality, where everything is quite a great deal higher than in the North and East. Money is all 8 and 10 per cent, and it costs considerably more to do business than in other localities. We expect our president, Mr. J. H. McDonald to-morrow at which time the writer will go over the matter with him, and will inform you of our decision.

Yours respectfully, H. P. BOWSER.

Separate Answer of Edwin L. Wayman.

Filed November 3rd, 1910.

In the Circuit Court of the United States for the District of Maryland.

No. —. In Equity.

UNITED STATES OF AMERICA, Petitioner,
v.
STANDARD SANITARY MANUFACTURING COMPANY and Others, Defendants.

The Separate Answer of Edwin L. Wayman, One of the Defendants in the Above-entitled Action, to the Petition Herein of the United States of America, Petitioner.

The defendant now and at all times hereafter saving and reserving to himself all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, insufficiences and imperfections in the Petitioner's said petition contained, for answer thereto, or to so much thereof as this defendant is advised is material and necessary for him to make answer to, says:

I.

That the defendant has no knowledge and has not been informed, save by the Petitioner's petition, and that he cannot set forth as to his belief, or otherwise, whether the United States of America, acting under the direction of the Attorney-General brings this proceeding in equity against this defendant and the other defendants named in the petition, and of this he demands that the said Petitioner shall furnish proof; and defendant denies the allegations contained in the preamble to said petition, that this defendant and the other defendants named in the petition, or any of them, are violating the provisions of the Act of Congress passed July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and defendant denies that the agreements referred to in the petition are contracts, combinations or conspiracies in restraint of trade in Sanitary Enameled Iron-Ware among the several States and with foreign nations, which should either be prevented or restrained.

II.

Defendant admits that he is a resident of Pittsburgh with offices in the Arrott Building in that City, as set forth in Subdivision I of said petition.

As to the other allegations contained in Subdivision I, defendant has no knowledge and has not been informed, save by Petitioner's petition, and except as so informed defendant cannot set forth his belief, or otherwise, as to whether the defendants in said subdivision

referred to are the corporations as described, whether the individuals are the officers and directors thereof as described, and as to whether such officers and directors participate in the management and direction of the business of the corporation defendants of which they are respectively alleged to be officers and directors and are responsible therefor, and as to these facts defendant demands that Petitioner shall furnish proof.

Defendant has no knowledge and has not been informed, save by the Petitioner's petition, and except as so informed defendant cannot set forth as to his belief, or otherwise, whether the defendants referred to in Subdivision II have been for many years and now are engaged in the manufacture of Sanitary Enameled Iron-Ware, such as bath-tubs, wash-bowls, lavatories, drinking fountains, sinks, closets, urinals, etc., at their several factories located as stated in said petition, and as to these facts defendant demands that Petitioner shall furnish proof.

Defendant has no knowledge and has not been informed, save by Petitioner's petition, and except as so informed defendant cannot set forth as to his belief, or otherwise, whether the defendants referred to in the first full paragraph on page 10 of the petition have been for many years and now are engaged in selling and shipping from their various places of manufacture said products of enameled iron-ware into the several States of the United States other than those wherein the said articles have been manufactured as aforesaid; and as to all the other allegations in said paragraph referred to defendant denies any knowledge, information or belief, except as informed by the petition herein, and as to these facts defendant demands that Petitioner shall furnish proof.

Defendant has no knowledge and has not been informed, save by Petitioner's petition, and except as so informed defendant cannot set forth as to his belief, or otherwise, whether the only manufacturers and dealers in articles of similar character, that is, Sanitary Enameled Iron-Ware, other than the defendants named in said petition are J. M. Kohler Sons Company, of Sheboygan, Wis., The Iron City Sanitary Manufacturing Company of Pittsburgh, Pa., Blairsville Enameled Ware Company of Blairsville, Pa., Clymer Manufacturing Company of Indiana, Pa., Louis Lipp of Cincinnati, Ohio, and Washington Iron Works of Los Angeles, Cal., and as to these facts defendant demands that Petitioner shall furnish proof.

Defendant has no knowledge and has not been informed, save by Petitioner's petition, and except as so informed defendant cannot set forth as to his belief, or otherwise, whether of the total volume of interstate and foreign trade and commerce in said products of Sanitary Enameled Iron-Ware being carried on by the defendants and by the six manufacturers and dealers named in the foregoing paragraph, the defendants named in the petition have and control eighty-five per *per* cent. (85%), or any similar amount, and as to these facts defendant demands that Petitioner shall furnish proof.

Defendant suggests that the allegation in the last paragraph of Subdivision II on page 11 of the petition is, as he is advised, purely a conclusion, which he need not answer, although to his silence in

this behalf no admission as to the truth of such conclusions is to be imputed; but that if said allegation requires an answer, defendant denies any knowledge, information or belief with respect thereto and demands that Petitioner shall furnish proof.

Defendant denies that he and the other defendants named in said petition, or any of them, are, or have been, engaged in any unlawful combination and conspiracy in restraint of interstate trade and commerce, or in any unlawful attempt to monopolize the same, as described in the last paragraph of Subdivision II on page 11 of said petition, or otherwise.

III.

Defendant denies that during the latter part of the year 1909, or early in 1910, or at any time, he engaged in a combination or conspiracy in restraint of interstate and foreign trade and commerce in Sanitary Enameled Iron-Ware, described in the petition, with the defendants, or any of them, in the manner set forth in Subdivision III of the petition, or otherwise, or that since that time the other defendants, or any of them, have been, or now are, engaged in such combination or conspiracy, or that interstate and foreign commerce has been or is now being restrained by any combination or conspiracy of the defendant with the other defendants, or any of them, in the manner alleged in the petition, or otherwise.

Defendant denies that the defendants by agreement have unlawfully, or at all, eliminated or suppressed competition between each other as to the prices at which they are selling in interstate and foreign commerce their products in Sanitary Enameled Iron-Ware, or that they have unlawfully, or at all, fixed or established, or are now maintaining uniform prices and terms of sale to their respective customers.

Defendant denies that the discounts which the defendants named in the petition quote and allow to jobbers in carrying on such commerce are arrived at by agreement between the defendants, or that each defendant quotes and allows such discounts only as are agreed upon, known to, and accepted by the other defendants.

Defendant avers that each of the corporation defendants has separately taken a license from the defendant, under Letters Patent of the United States No. 633,941 issued September 26, 1899, to James W. Arrott, Jr., for a dredger for pulverulent material, No. 949,625 issued February 15, 1910, to E. Ditheridge for a pneumatic sieve, and No. 939,918 issued November 9, 1909, to William Lindsay for an enameling powder distributer, which licenses are similar to Exhibit 8 attached to the petition, and that licensed Sanitary Enameled Iron-Ware is sold to jobbers under agreements similar to Exhibit 9 attached to the petition; but the defendant begs leave, upon the hearing of this cause, to refer to the originals of said licenses and said Jobbers' License Agreements for greater particularity. And, except as herein admitted, the defendant denies the allegations contained in the two full paragraphs on page 12 of the petition.

Defendant denies that the combination alleged in the paragraph commencing at the bottom of page 12 of the petition exists, or that

the result of the alleged combination is that throughout the United States all purchasers and users of the aforesaid products of Sanitary Enameled Iron-Ware are obliged to pay the same prices, or that such prices have been, or are now fixed by the defendants named in the petition, or otherwise, by mutual agreement, without competition with each other, or otherwise.

Defendant denies that he and the other defendants, or any of them, have devised means by which each of them is advised of the amount of the output of each of the other defendants in order that thereby they may by agreement limit and restrict the respective outputs, as may seem advisable; and avers that none of the other defendants named in the petition derive, under the terms of the licenses, any knowledge of the output of any of the other defendants, and that at no time is any information so gained for the purpose of limiting or restricting the respective outputs.

Defendant denies that by the alleged system of dividing the United States into zones, or any other system of contracts, jobbers are restricted in making sales to the zone in which said jobber is located; he denies that there is any arrangement whereby the jobber is not allowed to sell outside of his alleged zone; he denies that the manufacturers have adopted the feature alleged, or any other unlawful feature, to restrict the competition between jobbers, and to enable them to hold the jobbers firmly to the alleged selling arrangement and to the re-sale prices fixed by the combination, the existence of which alleged selling arrangement and of said alleged combination defendant denies; and avers that the defendant has separately licensed the several defendant corporations upon terms more fully set forth in said licenses and Jobbers' License Agreements, to the originals of which for greater particularity the defendant begs leave to refer upon the hearing of this cause; except as stated the defendant denies all the allegations in the said second paragraph on page 13 of the petition.

Defendant denies that the defendants by agreement or otherwise, have largely and unreasonably increased the prices at which they sell their products to the jobbers; the defendant denies that the defendants have more particularly advanced the re-sale prices of jobbers by their alleged system of contracts controlling re-sale prices, and avers that there is no agreement among the defendants, or any of them, as alleged.

Defendant denies that the defendants, or any of them, are cooperating in fighting the manufacturers of Sanitary Enameled Iron-Ware, or dealers therein, in interstate commerce, who have not become parties to the alleged combination, and denies the existence of the alleged combination; and defendant further denies that all of the defendants, or any of them, have united, or are engaged in a common effort to force the said manufacturers or dealers into the alleged combination, or to drive them out of business. Defendant denies the other allegations in said paragraph contained, and avers that the terms upon which the several manufacturers named as defendants in the petition sell to jobbers are fixed in the licenses which defendant has given, to the originals of which for greater particu-

larity the defendant begs leave to refer upon the hearing of this cause.

Defendant denies that the defendants have been establishing or enforcing a system of severe penalties which are imposed upon such members of the alleged combination as depart from the alleged rules respecting prices and terms fixed by the alleged combination, and denies that there is any combination among the defendants, or any of them. Defendant denies each and every other allegation in the first full paragraph on page 14 of the petition contained, and avers that the full terms upon which the several manufacturers, defendants herein, are licensed, are set forth in the licenses above referred to, to the originals of which for greater particularity the defendant begs leave to refer upon the hearing of this cause.

IV.

Defendant denies that the defendants, or any of them, have entered into any combination of the character described in the petition, or otherwise, and further denies each and every other allegation in said first paragraph in Subdivision IV contained; and avers that the licenses which defendant has given to the various licensees have been given in good faith, and upon the advice of counsel to the effect that they were based upon the patent laws of the United States, and that defendant is advised and believes the same to be lawful, and defendant is informed that the several defendants herein have been similarly advised and entertain similar beliefs.

Defendant denies the alleged conditional assignment of the three patents, or any of them, referred to in the said petition, in the second paragraph of Subdivision IV, or that he was selected as the assignee thereof by agreement of all the defendants, or of any of them, and each and every of the other allegations in said paragraph contained.

Defendant avers that he is the owner of the three patents specified in the full paragraph on page 15 of the petition, and that he purchased the same from certain of the defendants herein pursuant to certain several options; and he avers that the contracts of purchase are in writing, to the originals of which for greater particularity he begs leave to refer on the trial of this cause. Except as averred, the defendant denies that he purchased said patents as the result of any agreement such as alleged in the petition, or otherwise, between him and the other defendants herein, or any of them, and further denies, except as herein stated, each and every allegation contained in said full paragraph on page 15.

Defendant admits that prior to the granting of the licenses by the defendant to the various defendants, certain of them had manufactured their product without the use of the inventions covered by such patents, and defendant admits that the inventions covered by the said letters patent are useful and valuable in the manufacture of Sanitary Enameled Iron-Ware; but defendant denies each and every other allegation in the first full paragraph on page 16 contained.

Defendant denies that before the assignments to him of the Letters Patent referred to were made all the defendants, or any of them, had

agreed upon all the essential features of the licensing agreement. The defendant denies any agreement among the defendants whereby the defendant was to become the ostensible licensor, or that he was the ostensible licensor, and denies that a price list had been agreed upon among the defendants, or any of them, and he denies each and every other allegation in said paragraph contained; and avers that there was no agreement among the manufacturers, and avers that before any arrangement had been made with any manufacturer he had secured an option for the purchase of the Arrott and other patents.

Defendant admits that Exhibits 8, 9 and 10 respectively, attached to the petition, are generally correct copies of the Manufacturers' License Agreement, the Jobber's License Agreement, and a part of the Price List, but for greater particularity begs leave to refer to the originals thereof upon the trial of this action.

Defendant denies that Exhibits 1 to 7 attached to the petition evidence the manner in which the license arrangement was arrived at; that Exhibits 11 to 17 attached to the petition illustrate the methods of the defendants and the effect of the combination upon independent manufacturers and jobbers who have not signed the license agreements, and begs leave upon the trial hereof to refer to the originals of said Exhibits for greater particularity.

Defendant denies that all the terms and conditions of the contracts and agreements which together make up the alleged licensing arrangement, had been agreed upon by all the defendants, or any of them, prior to the assignment of the patents to the defendant. Defendant denies that each defendant stipulated as a condition to his executing the License Agreement that all the others should execute a similar agreement. Defendant denies the allegation that no defendant would have executed the agreement unless he had been certain that all of the other defendants would execute it. Defendant denies that the agreement on the part of all of the defendants to enter into the license arrangement was a condition precedent to the assignment of the patents to Wayman, and denies the existence of any agreement on the part of all the defendants, or any of them, to enter into the License Agreement as a condition precedent to the assignment to defendant. Defendant denies the allegation that there would not have been an assignment to him, or that no License Agreement with any of the defendants would have been arrived at, if all the corporation defendants had not agreed to go into the alleged scheme. Defendant denies the allegation that all the parties to the alleged arrangement were not seeking the use of a valid and essential patent necessary in the carrying on of their business, and that they were engaged in a price-fixing plan to wrongfully and unlawfully eliminate competition; and denies each and every other allegation in said paragraph on pages 17 and 18 of the petition contained.

V.

Defendant denies each and every allegation in Subdivision V of the petition contained.

VI.

Defendant denies all the allegations contained in Subdivision VI of the petition, except that he admits that the defendants A. Weiskittel & Son Co., Anton Weiskittel and John D. Heise are located and doing business within the State and District of Maryland, and that said individual defendants reside therein.

Furthermore, and for a more complete answer, the defendant says:

VII.

That prior to the invention of James W. Arrott, Jr., covered by Letters Patent of the United States No. 633,941, issued September 26, 1899, to said Arrott for enameling sanitary enameled iron ware, Sanitary Enameled Iron Ware was enameled by a hand process. This process consisted, generally, of sifting over the surface of the iron-ware, when heated to a red heat, the enameling powder. Enameling powder is supposed and intended to consist of such materials as when fused to form on the iron to be enameled a hard, impenetrable, insoluble, smooth and glossy surface. A sieve containing a quantity of the powder was attached to the end of a handle. The workman held the handle of the sieve with one hand and arm and moved the sieve horizontally over the surface of the iron-ware to be enameled, at the same time striking the handle with his other hand to cause the sieve to vibrate and sift the enameling powder over the surface of the iron-ware to be enameled. The powder jetted through the sieve in intermittent puffs or waves with each blow, and this, and the physical strain and intense heat caused, in a great many instances, the unequal distribution of the powder over the surface of the ware, which resulted in the enameling being wavy or rippled, uneven, or otherwise defective, and rendered the article enameled unsightly, less durable and unsaleable at a profit. The workman on account of the intense heat went through the enameling process as hurriedly as possible, with the result, in a great many instances, that the articles produced were worthless and had to be thrown away, or were so-called "seconds" and had to be sold at a price resulting in little, or no profit to the manufacturer. The process was laborious and slow, and consequently more readily fusible enameling powder had to be used which resulted in a less impervious, insoluble and durable and permanently glossy surface. Furthermore, it was injurious to the health of the workman and it was difficult to secure men physically capable of performing the work, and more difficult to train such men, as were capable, to do the work properly.

Arrott's invention, by using a mechanically operated agitator, in connection with the sieve, made possible the flowing of the enameling powder in a continuous stream, enabling the enameler to distribute the enameling powder evenly, equally and uniformly over the surface of the article to be enameled, as though the powder were a flowing thin liquid. With Arrott's invention, a workman can, by touching a valve button, secure a rapping action which is rapid, continuous and uniform. At the same time his hands are free both to sustain the load and to move the sieve over the surface and get a

uniform lateral powder distribution. The blows are so rapid and regular that the powder, instead of jetting through the sieve in a puff or distinct wave with each hand-struck blow, flows in a practically continuous regular sheet. Arrott's invention enables the enameler to be under a much less strain in the face of terrific heat, it enables him to enamel a very much greater number of articles per hour, and the work can be done by an average man of less physical strength than was required in the former process, and he can be more easily and quickly taught to do the enameling successfully. Arrott's invention is labor and material saving, and effective, and in relieving to a degree labor under fierce heat conditions arose to the plane of the humane.

VIII.

The manufacturers of sanitary enameled iron-ware recognized the necessity of Arrott's invention to the successful manufacture of Sanitary Enameled Iron-Ware. Many of them used the invention described in the patent, or equivalent means, for enameling the iron-ware. In all cases the owner of the patent claimed that such manufacturers were infringing the patent and demanded an accounting and damages under threat of suit for infringement. Some of the manufacturers settled with the owner of the Arrott patent by paying a lump sum of money in settlement of the claim for damages and claimed to have abandoned the use of the invention. Others sought to gain time, well knowing that in the end they would have to stand suit for infringement, pay damages, abandon the use of the invention, or take a license under the patent. Others without formally taking a license, made periodical payments to the owner of the patent in order to be allowed to continue the use of the invention. Still others were sued for infringement and judgments obtained against them by the owner of the patent, which judgments were settled by the payment of a sum of money.

IX.

Prior to the defendant granting the licenses herein referred to, the Arrott patent had been sustained by the Courts in several cases.

X.

For the reasons stated, the art was in a very unsatisfactory condition. No means had been discovered of accomplishing the result produced by the use of the Arrott invention without laying the user of such means open to a suit for infringement, by the owner of the Arrott patent. The manufacturers using the process in use prior to Arrott's invention, were unable to successfully compete with those using the Arrott invention, and moreover, produced a disproportionate number of defective, unsightly and substantially unsaleable articles. The consumer was deceived and defrauded and the use of Sanitary Enameled Iron-Ware lessened and its reputation depreciated by defective articles being palmed off on the consumer as not defective.

XI.

Defendant had been a manufacturer of enameled bath tubs, was familiar with the needs of the trade and its conditions and knew the value of the Arrott invention. He conceived the idea of purchasing the Arrott patent and certain other patents in the same art and issuing licenses to the various manufacturers of Sanitary Enameled Iron-Ware, under the belief that, by so doing, he could make a large sum of money, and that such an arrangement would render the trade in Sanitary Enameled Iron-Ware stable and would be highly beneficial to manufacturers, jobbers and the public by causing the general use of the Arrott invention and by doing away with a large portion of the defective articles produced by the former process.

With this purpose in view, defendant, in the early part of the year 1908, began negotiations to secure such patents. Still pursuing the same purpose, defendant took steps to purchase the Arrott invention from the Standard Sanitary Manufacturing Company. As a part of said arrangement, defendant secured an option upon the Arrott patent in the latter part of the year 1909. He also made arrangements to secure the Ditheridge patent from J. L. Mott Iron Works, and the Lindsay patent from the L. Wolff Manufacturing Company. Defendant secured such options because he knew that, in order to make the purchase of the patents profitable to him, he had to secure the agreement of a considerable number of manufacturers of Sanitary Enameled Iron-Ware to take licenses upon terms which would yield him a fair royalty, secure the conduct of the business in such a manner as to insure the payment of the royalty and to preserve and enhance the value of the invention; and he wished to ascertain whether this could be done before paying out a large sum of money in the purchase of the Arrott and other patents.

It was necessary that a fair royalty should be fixed; that the defendant should be able to prescribe the prices at which Sanitary Enameled Iron-Ware should be sold in order that the licensees should be able to pay the royalty and still make a profit, and conduct their business in such a way as to most successfully utilize the Arrott and other inventions, and that the prices should be maintained at such figures. Defendant realized that while the Arrott and other inventions would enable him, provided he could secure a sufficient number of licensees at a proper royalty, to make a large sum of money, it was necessary in order to secure such licensees, for him to offer them an opportunity of themselves making a profit out of the transaction.

Defendant consulted counsel with regard to the proposed purchase by him of the Arrott and other inventions covered by Letters Patent of the United States, and the license agreements which he proposed to make to the various manufacturers of Sanitary Enameled Iron-Ware under those patents, and was advised by counsel that the purchases proposed, and the licenses proposed were in pursuance of the patent laws of the United States and were in accordance with and covered by such statutes, and the decisions thereunder; that the steps that he proposed to take were entirely lawful and not in violation of any laws of the United States, or of the sev-

eral States, and particularly not in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

On or about March 2, 1910, defendant prepared a form of agreement to grant licenses under the Arrott and other patents. Defendant personally visited each of the manufacturers of Sanitary Enameled Iron-Ware whose names are signed to said agreement separately at their various places of business and procured their signatures to said agreement separately and on different dates without any concert or agreement as between themselves among the manufacturers. What purports to be a copy of said agreement is attached to the petition, marked "Exhibit 3". Defendant begs leave to refer to the original of said agreement, when produced upon the hearing on this petition, for the particulars of such agreement, as if the same were herein fully set forth.

XII.

Defendant had licenses and jobbers' license agreements prepared, embodying certain terms and conditions which he proposed to prescribe to those taking licenses under said patents, and from time to time presented said licenses and said jobbers' license agreements to the several corporation defendants with full explanations in regard to the same, and at the same time requested an opinion of counsel to be given to such corporation defendants, which said opinion was that the proposed licenses were fully covered by the patent laws of the United States and the decisions thereunder, were entirely lawful and not in violation of the laws of the United States or of any of the several States, and particularly not in violation of the Act of Congress commonly known as the Sherman Anti-Trust Act.

On information and belief defendant alleges that the defendants named in the petition, other than the defendant Wayman, thereupon severally consulted counsel of their own selection with regard to the legality of the said licenses and the jobbers' license agreements, and were advised by such counsel that the same were in all respects lawful, and not in violation of the laws of the United States or of any of the several States.

Defendant being satisfied that he had secured agreements with a sufficient number of manufacturers of sanitary enameled iron-ware to make the purchase by him of the patents profitable, proceeded, before the expiration of his options, to procure absolute assignments of said patents, and said patents, for a valuable consideration, were absolutely assigned in writing to the defendant, and defendant is the absolute owner of said patents, without anyone else having any interest therein. Defendant asks leave on the trial hereof to refer to the originals of said assignments as if the same were set out in full herein.

Negotiations were thereupon conducted between the defendant Wayman on the one side and the several other defendants named in the petition severally on the other, which resulted in a form of agreement as to details of the terms and conditions embodied in the

licenses and jobbers' license agreements of which exhibits 8 and 9, attached to the petition herein, purport to be copies.

Defendant begs leave to refer to the originals of said licenses and jobbers' license agreements when produced upon the hearing herein, for greater particularity, as if the same were fully set forth herein.

XIII.

Defendant issued licenses to the various corporation defendants named herein severally, and to various other persons, upon various dates, as follows:

Standard Sanitary Manufacturing Co	May 6, 1910
A. Weiskittel & Son Co	May 6, 1910
The Barnes Manufacturing Co	May 6, 1910
The Cahill Iron Works, agreed to sign May 29, 1910, actually signed	July 6, 1910
Colwell Lead Works	May 25, 1910
The Day-Ward Company	May 6, 1910
The Humphryes Manufacturing Co	May 6, 1910
Kerner Manufacturing Co	May 6, 1910
The J. L. Mott Iron Works	May 6, 1910
McVay-Walker Co.	May 6, 1910
The McCrum-Howell Co	May 6, 1910
The National Sanitary Manufacturing Co	May 6, 1910
United States Sanitary Manufacturing Co	May 6, 1910
L. Wolff Manufacturing Co	May 6, 1910
Wheeling Enameled Iron Works	May 6, 1910
Union Sanitary Manufacturing Company	May 6, 1910

That since defendant issued these licenses the other defendants named in the petition herein have been and are now using the inventions covered by said letters patent, and as to which they are licensed, in the manufacture of Sanitary Enameled Iron-Ware.

Defendant is advised by counsel, and upon information and belief avers that the other defendants named in the petition are advised by their respective counsel, and therefore avers, that the said licenses are in all respects lawful, and that in acting in compliance therewith they are not violating the laws of the United States or of any of the several States, and particularly are not violating the Act of Congress commonly known as the Sherman Anti-Trust Act.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said petition charged; without this, there is any other matter, cause or thing in said petitioner's said petition contained material or necessary for this defendant to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct; and humbly

prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

EDWIN L. WAYMAN.
NOBLE, JACKSON & HUBBARD,
CARROL T. BOND,
Solicitors for Defendant.

HERBERT NOBLE,
EDWIN E. JACKSON, JR.,
WILLIAM L. MARBURY,
Of Counsel.

STATE OF NEW YORK,
County of New York, ss:

Edwin L. Wayman, being duly sworn, deposes and says that he has read the foregoing answer and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

EDWIN L. WAYMAN.

Sworn to before me this 28th day of October, 1910.
[NOTARIAL SEAL.]
C. MACINNES,
Notary Public, Kings County.

Certificate filed in New York County.

Answer of Standard Sanitary Manufacturing Company and Others.

Filed November 3rd, 1910.

In the Circuit Court of the United States for the District of Maryland.

No. —. In Equity.

UNITED STATES OF AMERICA, Petitioner,
v.
STANDARD SANITARY MANUFACTURING COMPANY and Others, Defendants.

The Joint and Several Answer of the Standard Sanitary Manufacturing Company, The J. L. Mott Iron Works, L. Wolff Manufacturing Company, Theodore Ahrens, Francis J. Torrance, E. L. Dawes, W. A. Myler, Jordan L. Mott, Max Goebel, Ludwig Wolff and Herman Hoelscher, Defendants, to the Petition Herein of the United States of America, Petitioner.

The defendants severally now and at all times hereafter saving and reserving to themselves all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken

to the many errors, uncertainties, insufficiencies and imperfections in the said petition contained, for answer thereto, or to so much thereof as these defendants are advised is material and necessary for them to answer to, say:

I.

Defendants have no knowedge and have not been informed, save by the Petitioner's petition, and except as so informed they cannot set forth as to their belief, or otherwise, whether the United States of America, acting under the direction of the Attorney General, brings this proceeding in equity against these defendants and the other defendants named in the petition, and of this they demand that the said petitioner shall furnish proof; and the defendants deny the allegations contained in the preamble to said petition, that these defendants and the other defendants named in the petition, or any of them, are violating the provisions of the Act of Congress passed July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies." And defendants deny that the agreements referred to in the petition are contracts, combinations or conspiracies in restraint of trade in Sanitary Enameled Iron-Ware among the several States and with foreign nations, which should either be prevented or restrained.

Defendants suggest that the allegation in the last paragraph at the bottom of page eight of the petition, as they are advised, is purely a conclusion which they need not answer, although to their silence in this behalf no admission as to the truth of such conclusion is to be imputed.

II.

The defendants suggest that the allegations in the first paragraph on page 10 of said petition that the defendants are engaged in interstate and foreign trade and commerce in Sanitary Enameled Iron-Ware within the meaning of the Act of 1890, commonly known as the Sherman Anti-Trust Act, are, as they are advised, purely a conclusion although to their silence in this behalf no admission as to the truth of this conclusion is to be imputed.

Defendants have no knowledge and have not been informed, save by the petition herein, and except as so informed, defendants cannot set forth as to their belief, or otherwise, whether the only manufacturers and dealers in articles of similar character, that is Sanitary Enameled Iron-Ware, other than the defendants named in said petition are J. M. Kohler Sons Company at Sheboygan, Wis., The Iron City Sanitary Manufacturing Company of Pittsburgh, Pa., Blairsville Enameled Ware Company of Blairsville, Pa., Clymer Manufacturing Company of Indiana, Pa., Louis Lipp of Cincinnati, Ohio, and Washington Iron Works of Los Angeles, Cal., and as to these facts, defendants demand that petitioner shall furnish proof.

Defendants have no knowledge and have not been informed, save by the petition herein, and except as so informed cannot set forth as to their belief, or otherwise, whether of the total volume of interstate and foreign trade and commerce in said products of Sanitary Enameled Iron-Ware being carried on by the defendants, and by

the six manufacturers and dealers named in the foregoing paragraph, the defendants named in the petition have and control 85%, or any similar amount, and as to these facts defendants demand that petitioner shall furnish proof.

Defendants suggest that the allegations in the last paragraph of Subdivision II, page 11 of the petition are, as they are advised, purely conclusions which they need not answer although to their silence in this behalf no admission as to the truth of such conclusions is to be imputed; but, if such allegations require an answer, defendants deny any knowledge, information or belief with respect thereto and demand that petitioner shall furnish proof.

Defendants deny that they or any of them or any of the other defendants named in the petition are, or have been, engaged in any unlawful combination or conspiracy in restraint of interstate trade and commerce, or in any unlawful attempt to monopolize the same, as described in the last paragraph of Subdivision II on page 11 of the said petition, or otherwise.

III.

Defendants deny that during the latter part of the year 1909 or early in 1910, or at any time they, or any of them, engaged in a combination or conspiracy in restraint of interstate and foreign trade and commerce in Sanitary Enameled Iron-Ware, in the manner set forth in Subdivision III of the petition, or otherwise, either among themselves or with any of the defendants named in the petition, or that since that time they, the other defendants, or any of them have been, or now are, engaged in such combination or conspiracy, or that interstate and foreign commerce has been or is now being restrained by any combination or conspiracy of the defendants among themselves, or with the other defendants, or any of them, in the manner alleged in the petition, or otherwise.

Defendants deny that by agreement either among themselves, or with the other defendants named in the petition, they have unlawfully, or at all, eliminated or suppressed competition between each other as to prices at which they are selling in interstate and foreign commerce their products in Sanitary Enameled Iron-Ware, or that they have unlawfully, or at all, fixed or established or are now maintaining uniform prices and terms of sale to their respective customers.

The defendants deny that the discounts which the defendants named in the petition quote and allow to jobbers in carrying on such commerce are arrived at by agreement between the defendants among themselves, or that each defendant quotes and allows such discounts only as agreed upon, known to and accepted by the other defendants named in the petition.

Defendants aver that each of the corporation defendants here answering has separately taken a license from the defendant Edwin L. Wayman, under Letters Patent of the United States No. 633,941, issued September 26, 1899, to James W. Arrott, Jr., for a dredger for pulverulent material, No. 949,625, issued February 15, 1910, to E. Ditheridge for a pneumatic sieve, and No. 939,918, issued No-

vember 9, 1909, to William Lindsay for an enameling powder distributer, which licenses are similar to Exhibit 8 attached to the petition, and that licensed Sanitary Enameled Iron-Ware is sold by the defendants to jobbers under agreements similar to Exhibit 9 attached to the petition, but the defendants beg leave upon the hearing of this cause, to refer to the originals of said licenses and said Jobbers' License Agreements for greater particularity. And, except as herein admitted, the defendants deny the allegations contained in the two full paragraphs on page 12 of the petition.

Defendants deny that the combination alleged in the paragraph commencing at the bottom of page 12 of the petition exists, or that the result of the alleged combination is that throughout the United States all purchasers and users of the aforesaid products of Sanitary Enameled Iron-Ware are obliged to pay the same prices, or that such prices have been or are now fixed by the defendants named in the petition by mutual agreement, or otherwise, without competition with each other or otherwise.

Defendants deny that they, or any of them, have devised means by which each of them is advised of the amount of output of each of the other defendants named in the petition in order that thereby they may, by agreement limit and restrict respective outputs as may seem advisable; and aver that they do not derive, under the terms of the licenses, knowledge of the output of any of the defendants named in the petition, and aver that at no time is any information so gained for the purpose of limiting and restricting their respective outputs.

Defendants deny that they have divided the United States into certain territorial or geographical zones, and they further deny that by the alleged system of dividing the United States into zones, or any other system of contracts, jobbers are restricted in making sales to the zone in which such jobber is located. They deny that there is any arrangement whereby the jobber is allowed to sell outside of his alleged zone. They deny that the manufacturers have adopted the feature alleged, or any other unlawful feature, to restrict the competition between jobbers and to enable them to hold the jobbers firmly to the alleged selling arrangement and to the re-sale prices fixed by the combination, the existence of which alleged selling arrangement and said alleged combination defendants deny; and defendants aver that the defendant, Wayman, has separately licensed the several defendant corporations upon terms more fully set forth in said licenses and jobbers' license agreements, to the originals of which for greater particularity the defendants beg leave to refer upon the hearing of this cause; except as stated, the defendants deny all the allegations in said second paragraph on page 13 of the petition.

The defendants deny that among themselves or by agreement with the other defendants named in the petition, or otherwise, they have largely and unreasonably increased the prices at which they sell their products to jobbers; defendants deny that the defendants have more particularly advanced the re-sale prices of jobbers by their alleged system of contracts controlling re-sale prices, and aver that

there is no agreement among the defendants named in the petition, or any of them, as alleged.

The defendants deny that the defendants named in the petition, or any of them, are co-operating in fighting the manufacturers of Sanitary Enameled Iron-Ware, or dealers therein, in interstate commerce who have not become parties to the alleged combination, and deny the existence of the alleged combination; and the defendants further deny that all of the defendants, or any of them, have united or are engaged in a common effort to force the said manufacturers or dealers into the alleged combination, or to drive them out of business.

Defendants deny the other allegations in said paragraph contained and aver that the terms upon which the several manufacturers sell to jobbers are fixed in the licenses which the defendant, Wayman, has given, to the originals of which for greater particularity the defendants beg leave to refer upon the hearing of this cause.

Defendants deny that they, or any of the defendants named in the petition, have been establishing and enforcing a system of severe penalties which are imposed upon such members of the alleged combination as depart from the alleged rules respecting prices and terms fixed by the alleged combination, and deny that there is any combination among the defendants, or any of them. Defendants deny each and every other allegation in the first full paragraph of said petition on page 14, and aver that the full terms upon which the several manufacturers, defendants herein, are licensed, are set forth in the licenses above referred to, to the originals of which for greater particularity the defendants beg leave to refer upon the hearing of this cause.

IV.

Defendants deny that the defendants named in the petition, or any of them, have entered into any combination of the character described in the petition, or otherwise, and further deny each and every other allegation in said first paragraph of Subdivision IV.; and aver that the licenses which the defendant, Wayman, has given to the various licensees have been given by the defendant, Wayman, and accepted by the defendants in good faith and upon the advice of counsel to the effect that such licenses were based upon the patent laws of the United States and that defendants are advised and believe the same to be lawful, and defendants are informed that the other defendants named in the petition herein have been similarly advised and entertain similar beliefs.

Defendants deny the alleged conditional assignment of the three patents, or any of them, referred to in the said petition in paragraph 2 of Subdivision IV., or that the defendant, Wayman, was selected as the assignee thereof by agreement of the defendants, or any of them, or any of the defendants named in the petition, and defendants deny each and every of the other allegations in said paragraph contained.

Defendants aver that the defendant Wayman is the owner of the three patents specified in the full paragraph on page 15 of the peti-

tion, and that he purchased the same severally from these answering defendants pursuant to certain several options.

And defendants further aver that the contracts under which said defendant Wayman purchased the said patents are in writing, to the originals of which for greater particularity the defendants beg leave to refer on the trial of this cause.

Except as averred these answering defendants deny that the said purchases were made as the result of any agreement between the defendant Wayman and these answering defendants, or any of them, or any of the defendants named in the petition; and further deny, except as herein stated, each and every allegation in said full paragraph on page 15 contained.

Defendants admit that prior to the granting of the licenses by defendant, Wayman, to the various defendants named in the petition, certain of them had manufactured their product without the use of the inventions covered by such patents, and the defendants admit that the inventions covered by the said Letters Patent are useful and valuable in the manufacture of Sanitary Enameled Iron-Ware; but defendants deny each and every other allegation in the first full paragraph on page 16 of the petition contained.

Defendants deny that before the assignments to the defendant, Wayman, of the Letters Patent referred to were made they had agreed either with him, or among themselves, or with any of the defendants named in the petition, upon all the essential features of the licensing agreement. Defendants deny any agreement among themselves, or with the other defendants named in the petition, or any of them, whereby defendant, Wayman, was to become the ostensible licensor, or that he was the ostensible licensor, and deny that a price list had been agreed upon between defendant, Wayman, and these defendants, or among themselves, or with any of the other defendants named in the petition, and they deny each and every other allegation in said paragraph contained, and aver that there was no agreement among the manufacturers and aver that before any agreement had been made with any manufacturer defendant Wayman had secured an option for the purchase of the Arrott and other patents.

Defendants admit that Exhibits 8, 9 and 10 respectively, attached to the petition, are generally correct copies of the manufacturers' license agreement, the jobbers' license agreement, and a part of the price list, but for greater particularity beg leave to refer to the originals thereof upon the trial of this action.

Defendants deny that Exhibits 1 to 7, attached to the petition, evidence the manner in which the license arrangement was arrived at; that Exhibits 11 to 17, attached to the petition, illustrate the methods of the defendants and the effect of the combination upon independent manufacturers and jobbers who have not signed the license agreements, beg leave upon the trial hereof to refer to the originals of said exhibits for greater particularity.

Defendants deny that all the terms and conditions of the contracts and agreements which together make up the alleged licensing arrangement had been agreed upon by all the defendants, or any of them, prior to the assignment of the patents to the defendant Way-

man. The defendants deny that each defendant stipulated, as a condition precedent to his executing the license agreement, that all the others should execute a similar agreement. Defendants deny the allegation that no defendant would have executed the agreement unless he had been certain that all of the other defendants would execute it. Defendants deny that the agreement on the part of all of the defendants to enter into the license arrangement was a condition precedent to the assignment of the patents to defendant Wayman, and defendants deny the existence of any agreement on the part of all the defendants, or any of them, to enter into the license agreement as a condition precedent to the assignment to defendant Wayman. Defendants deny the allegation that there would not have been an assignment to the defendant Wayman, or that no license agreement with any of the defendants would have been arrived at if all the corporation defendants had not agreed to go into the alleged scheme. Defendants deny the allegation in the petition that all the parties to the alleged arrangement were not seeking the use of a valid and essential patent necessary in the carrying on of their business, and defendants further deny that they were engaged in a price fixing plan to wrongfully and unlawfully eliminate competition; and deny each and every other allegation in said paragraph on pages 17 and 18 of the petition contained.

V.

Defendants deny each and every allegation in Subdivision V of the petition contained.

VI.

Defendants deny all the allegations contained in Sub-division VI of the petition, except that they admit that the defendants A. Weiskittel & Son Company, Anton Weiskittel and John D. Heise are located and doing business within the State and District of Maryland, and that said individual defendants reside therein.

Furthermore, and for more complete answer, the defendants say:

VII.

That prior to the invention of James W. Arrott, Jr., covered by Letters Patent of the United States No. 633,941, issued September 26, 1899, to said Arrott for enameling sanitary enameled iron-ware, Sanitary Enameled Iron-Ware was enameled by a hand process. This process consisted generally of sifting over the surface of the iron-ware, when heated to a red heat, the enameling powder. Enameling powder is supposed and intended to consist of such materials as when fused to form on the iron to be enameled a hard, impenetrable, insoluble, smooth and glossy surface. A sieve containing a quantity of the powder was attached to the end of a handle. The workman held the handle of the sieve with one hand and arm and moved the sieve horizontally over the surface of the iron-ware to be enameled, at the same time striking the handle with his other hand to cause the sieve to vibrate and sift the enameling powder over the

surface of the iron-ware to be enameled. The powder jetted through the sieve in intermittent puffs or waves with each blow, and this, and the physical strain and intense heat caused, in a great many instances, the unequal distribution of the powder over the surface of the ware which resulted in the enameling being wavy or rippled, uneven, or otherwise defective, and rendered the article enameled unsightly, less durable and unsaleable at a profit. The workman on account of the intense heat went through the enameling process as hurriedly as possible, with the result, in a great many instances, that the articles produced were worthless and had to be thrown away, or were so-called "seconds" and had to be sold at a price resulting in little, or no profit to the manufacturer. The process was laborious and slow and consequently more readily fusible enameling powder had to be used which resulted in a less impervious, insoluble and durable and permanently glossy surface. Furthermore, it was injurious to the health of the workmen and it was difficult to secure men physically capable of performing the work, and more difficult to train such men, as were capable, to do the work properly.

Arrott's invention, by using a mechanically operated agitator, in connection with the sieve, made possible the flowing of the enameling powder in a continuous stream, enabling the enameler to distribute the enameling powder evenly, equally and uniformly over the surface of the article to be enameled, as though the powder were a flowing thin liquid. With Arrott's invention, a workman can, by touching a valve button, secure a rapping action which is rapid, continuous and uniform. At the same time his hands are free both to sustain the load and to move the sieve over the surface and get a uniform lateral powder distribution. The blows are so rapid and regular that the powder, instead of jetting through the sieve in a puff, or distinct wave with each hand-struck blow, flows in a practically continuous, regular sheet. Arrott's invention enables the enameler to be under a much less strain in the face of terrific heat, it enables him to enamel a very much greater number of articles per hour, and the work can be done by an average man of less physical strength than was required in the former process, and he can be more easily and quickly taught to do the enameling successfully. Arrott's invention is labor and material saving and effective and, in relieving to a degree labor under fierce heat conditions, arose to the plane of the humane.

VIII.

The manufacturers of Sanitary Enameled Iron-Ware recognized the necessity of Arrott's invention to the successful manufacture of Sanitary Enameled Iron-Ware. Many of them used the invention described in the patent, or equivalent means, for enameling the iron-ware. In all cases the owner of the patent claimed that such manufacturers were infringing the patent and demanded an accounting and damages under threat of suit for infringement. Some of the manufacturers settled with the owner of the Arrott patent by paying a lump sum of money in settlement of the claim for damages and claimed to have abandoned the use of the invention. Others sought

to gain time well knowing that in the end they would have to stand suit for infringement, pay damages, abandon the use of the invention, or take a license under the patent. Others without formally taking a license, made periodical payments to the owner of the patent in order to be allowed to continue the use of the invention. Still others were sued for infringement and judgments obtained against them by the owner of the patent, which judgments were settled by the payment of a sum of money.

IX.

Prior to the defendant Wayman granting the licenses herein referred to, the Arrott patent had been sustained by the Courts in several cases.

X.

For the reasons stated, the art was in a very unsatisfactory condition. No means had been discovered of accomplishing the result produced by the use of the Arrott invention without laying the user of such means open to a suit for infringement by the owner of the Arrott patent. The manufacturers using the process in use prior to Arrott's invention were unable to successfully compete with those using the Arrott invention, and moreover, produced a disproportionate number of defective, unsightly and substantially unsaleable articles. The consumer was deceived and defrauded and the use of Sanitary Enameled Iron-Ware lessened and its reputation depreciated by defective articles being palmed off on the consumer as not defective.

XI.

The defendants had known the defendant Wayman as a manufacturer of enameled bath tubs, being connected with the Seamless Steel Bath Tub Company of Detroit, Michigan, and as Actuary of the Sanitary Enameled Iron-Ware Association, of which the defendants were members, and as such he was familiar with the needs of the trade and its condition, and knew the value of the Arrott invention.

That the defendant, Standard Sanitary Manufacturing Company, owned the Arrott patent and gave the defendant, Wayman, an option to purchase the said patent in the latter part of the year 1909, and thereafter, and within the time for which said option was given, duly assigned the said patent to the said defendant Wayman for a valuable consideration.

That the defendant, J. L. Mott Iron Works, owned the invention covered by the Ditheridge patent, and gave the defendant, Wayman, on or about the 15th day of February, 1910, an option to purchase the said invention, and thereafter, and within the time for which said option was given, duly assigned the patent to the defendant, Wayman, for a valuable consideration.

That the defendant, L. Wolff Manufacturing Company, owned the Lindsay patent, and gave the defendant, Wayman, an option on the 10th day of January, 1910, to purchase the same, and thereafter, and within the time for which said option was given, duly

assigned the said patent to the defendant, Wayman, for a valuable consideration.

That at or about the time of acquiring the said options, and thereafter, the defendant, Wayman, discussed with the defendants severally the question whether they would accept a license to use said inventions if he exercised his options and purchased said inventions.

That thereafter and during the month of March, 1910, the defendant, Wayman, called upon the defendants and presented a form of agreement, substantially the same as Exhibit 3 attached to the petition herein, upon different days and at different places, and some of the defendants, as appears from the signatures appended to the instruments, signed the same.

That thereafter, and on or about the 29th and 30th days of March, 1910, at the invitation of the defendant, Wayman, the defendants came to New York and met the defendant, Wayman, and his counsel. At said meetings a plan of a license under the various inventions covered by the Letters Patent referred to was explained in detail by Mr. Wayman and his counsel, and the legal features thereof discussed. The plan of license proposed and the terms proposed were generally acceptable to the defendants, and thereupon the defendants appointed a Committee from their number to negotiate on behalf of the manufacturers, on the one hand, with Mr. Wayman, on the other hand, as to the terms and the details of the terms upon which the said licenses could be obtained from him.

That thereafter the said Wayman prepared and presented to the several defendants proposed license agreements, proposed jobbers' license agreements, and proposed price lists, all of which were accepted by each of the defendants in the form as they now exist.

That defendants took advice of their respective counsel as to the plan as described, before accepting the said licenses, and were advised that the plan as described was covered by the Patent Laws of the United States, was entirely lawful and was not in violation of any law of the United States, or of any of the several States.

XII.

That each of the defendants fully realized the value of the use of the inventions covered by the Letters Patent referred to and that it would cause numerous economies in material, labor, time consumed, increase of output, and avoid the great loss caused by the production of defective articles. The defendants severally, therefore, readily accepted the proposition as made by Wayman as being very greatly to their benefit.

The defendants acted in entire good faith and in the belief that they were doing what they had an entire legal right to do.

That since the defendant Wayman issued the licenses referred to the defendants named in the petition herein have been and are now using the inventions covered by said Letters Patent, and as to which they are licensed, in the manufacture of Sanitary Enameled Iron-Ware. Defendants are advised by their respective counsel, and therefore aver that the said licenses are in all respects lawful,

and that in acting in accordance therewith they are not violating the laws of the United States, or of any of the several States, and particularly are not violating the Act of Congress commonly known as the Sherman Anti-Trust Act.

And the defendants deny all and all manner of unlawful combinations and confederacy wherewith they are by the said petition charged; without this, there is any other matter, cause or thing in said petition contained material or necessary for the defendants to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of the defendants all which matters and things the defendants are ready and willing to aver, maintain and prove as this honorable court shall direct; and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

[Seal Standard Sanitary Manufacturing Company, 1899.]

STANDARD SANITARY MANFG. CO.,
By THEO. AHRENS, *President.*
THEO. AHRENS.
FRANCIS J. TORRANCE.
EDWARD L. DAWES.

[Seal L. Wolff Manufacturing Co.]

L. WOLFF MANUFACTURING CO.,
By HERMAN M. HOELSCHER, *Sec'y.*
LUDWIG WOLFF, *President.*
HERMAN M. HOELSCHER.

[Seal The J. L. Mott Iron Works.]

THE J. L. MOTT IRON WORKS.
MAX GOEBEL, *Secretary.*
MAX GOEBEL.
JORDAN L. MOTT.
W. A. MYLER.
NOBLE, JACKSON & HUBBARD,
CARROLL T. BOND, *Solicitors for Defendants.*

HERBERT NOBLE,
EDWIN E. JACKSON, JR.,
WILLIAM L. MARBURY,
Of Counsel.

STATE OF NEW YORK,
County of New York, ss:

Theodore Ahrens, being duly sworn, deposes and says: I am the President of the Standard Sanitary Manufacturing Company, one of the defendants named in the foregoing answer; I have read the foregoing answer, and am familiar with the contents thereof; the same is true of my own knowledge, except as to the matters therein

stated to be alleged upon information and belief, and as to those matters I believe it to be true.

THEO. AHRENS.

Sworn to before me this 30th day of September, 1910.

C. MACINNES,
[NOTARIAL SEAL.] *Notary Public, Kings County.*

Certificate filed in New York County.

STATE OF NEW YORK,
County of New York, ss:

Herman M. Hoelscher, being duly sworn, deposes and says: I am the Secretary of the L. Wolff Manufacturing Company, one of the defendants named in the foregoing answer; I have read the foregoing answer, and am familiar with the contents thereof; the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters I believe it to be true.

HERMAN M. HOELSCHER.

Sworn to before me this 30th day of September, 1910.

C. MACINNES,
[NOTARIAL SEAL.] *Notary Public, Kings County.*

Certificate filed in New York County.

STATE OF NEW YORK,
County of New York, ss:

Theodore Ahrens, Francis J. Torrance, and Herman M. Hoelscher, being severally duly sworn, depose and say, and each for himself deposes and says:

That he is one of the individual defendants named in the foregoing answer; that he has read the foregoing answer, and is familiar with the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

THEO. AHRENS.
HERMAN M. HOELSCHER.
FRANCIS J. TORRANCE.

Severally sworn to before me this 30th day of September, 1910.

C. MACINNES,
[NOTARIAL SEAL.] *Notary Public, Kings County.*

Certificate filed in New York County.

STATE OF NEW YORK,
County of New York, ss:

Max Goebel, being duly sworn, deposes and says:

I am Secretary of the J. L. Mott Iron Works, one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

MAX GOEBEL.

Sworn to before me this 30th day of September, 1910.

[NOTARIAL SEAL.] C. MACINNES,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF NEW YORK,
County of New York, ss:

Jordan L. Mott and Max Goebel, being severally duly sworn depose and say, and each for himself deposes and says:

That he is one of the defendants named in the foregoing answer; that he has read the foregoing answer and is familiar with the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

MAX GOEBEL.
JORDAN L. MOTT.

Severally -worn to before me this 30th day of September, 1910.

[NOTARIAL SEAL.] C. MACINNES,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

W. A. Myler and E. L. Dawes, being severally duly sworn, depose and say, and each for himself deposes and says that he is one of the individual defendants named in the foregoing answer; that he has read the same and is familiar with the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

W. A. MYLER.
E. L. DAWES.

Severally sworn to before me this 1st day of October, 1910.

[NOTARIAL SEAL.] AGNES C. WAY,
Notary Public.

My commission expires January 16th, 1913.

STATE OF ILLINOIS,
County of Cook, ss:

Ludwig Wolff, being duly sworn, deposes and says: I am one of the defendants named in the foregoing answer; I have read the foregoing answer and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

LUDWIG WOLFF.

Sworn to before me this 6th day of October, 1910.
[NOTARIAL SEAL.] G. C. SCHULTZ,
Notary Public.

Answer of A. Weiskittel & Son Co. and Others.

Filed November 3rd, 1910.

In the Circuit Court of the United States for the District of Maryland.

No. —. In Equity.

UNITED STATES OF AMERICA, Petitioner,
v.
STANDARD SANITARY MANUFACTURING COMPANY and Others, Defendants.

The Joint and Several Answer of A. Weiskittel & Son Company, The Barnes Manufacturing Company, The Cahill Iron Works, Colwell Lead Company, The Day-Ward Company, The Humphreys Manufacturing Company, McVay-Walker Company, The McCrum-Howell Company, National Sanitary Manufacturing Company, Kerner Manufacturing Company, Union Sanitary Manufacturing Company, United States Sanitary Manufacturing Company, Wheeling Enameled Iron Company, Anton Weiskittel, John D. Heise, C. H. Voegele, T. R. Barnes, F. H. Caldwell, J. J. Mahoney, Jesse T. Durvea, Bert O. Tilden, W. C. Winfield, A. G. Ward, S. N. Ford, Reid Carpenter, J. A. Frauenheim, Thomas Walker, Alexander C. Walker, Lloyd G. McCrum, Howard T. Gates, Frank G. Borden, D. W. Davis, L. C. Huesman, E. V. Brigham, Charles Arrott, Jr., A. H. Cline, Jr., J. E. Wright, and George W. Franzheim, Defendants, to the Petition Herein of the United States of America, Petitioner.

The defendants severally now and at all times hereafter saving and reserving to themselves all and all manner of benefit or advantage of exception or otherwise, that can or may be had or taken to the many errors, uncertainties, insufficiencies and imperfections in the said petition contained, for answer thereto, or to so much thereof as these

defendants are advised is material and necessary for them to answer to, say:

I.

The defendants have no knowledge and have not been informed, save by the Petitioner's petition, and they cannot set forth as to their belief, or otherwise, whether the United States of America, acting under the direction of the Attorney General, brings this proceeding in equity against these defendants and the other defendants named in the petition, and of this they demand that the said petitioner shall furnish proof; and the defendants deny the allegations contained in the preamble to said petition, that these defendants and the other defendants named in the petition, or any of them, are violating the provisions of the Act of Congress passed July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies." And the defendants deny that the agreements referred to in the petition are contracts, combinations or conspiracies in restraint of trade in Sanitary Enameled Iron-Ware among the several States and with foreign nations, which should either be prevented or restrained.

Defendants suggest that the allegations in the last paragraph at the bottom of page eight of the petition, as they are advised, is purely a conclusion which they need not answer, although to their silence in this behalf no admission as to the truth of such conclusion is to be imputed.

II.

The defendants suggest that the allegations in the first paragraph on page 10 of said petition that defendants are engaged in interstate and foreign trade and commerce in Sanitary Enameled Iron-Ware within the meaning of the Act of 1890, commonly known as the Sherman Anti-Trust Act, are, as they are advised, purely a conclusion although to their silence in this behalf no admission as to the truth of this conclusion is to be imputed.

Defendants have no knowledge and have not been informed, save by the petition herein, and except as so informed, defendants cannot set forth as to their belief, or otherwise, whether the only manufacturers and dealers in articles of similar character, that is Sanitary Enameled Iron-Ware, other than the defendants named in said petition are J. M. Kohler Sons Company at Sheboygan, Wis., The Iron City Sanitary Manufacturing Company of Pittsburgh, Pa., Blairsville Enameled Ware Company of Blairsville, Pa., Clymer Manufacturing Company of Indiana, Pa., Louis Lipp of Cincinnati, Ohio, and Washington Iron Works, of Los Angeles, Cal., and as to these facts, defendants demand that petitioner shall furnish proof.

Defendants have no knowledge and have not been informed, save by the petition herein, and except as so informed cannot set forth as to their belief, or otherwise, whether of the total volume of interstate and foreign trade and commerce in said products of Sanitary Enameled Iron-Ware being carried on by the defendants, and by the six manufacturers and dealers named in the foregoing paragraph, the defendants named in the petition have and control 85%, or any

similar amount, and as to these facts defendants demand that petitioner shall furnish proof.

Defendants suggest that the allegations in the last paragraph of Sub-division II, page 11 of the petition are, as they are advised, purely conclusions which they need not answer although to their silence in this behalf no admission as to the truth of such conclusions is to be imputed; but, if such allegations require an answer, defendants deny any knowledge, information or belief with respect thereto and demand that petitioner shall furnish proof.

Defendants deny that they or any of them or any of the other defendants named in the petition are, or have been, engaged in any unlawful combination or conspiracy in restraint of interstate trade or commerce, or in any unlawful attempt to monopolize the same, as described in the last paragraph of Sub-division II on page 11 of the said petition, or otherwise.

III.

Defendants deny that during the latter part of the year 1909 or early in 1910, or at any time they, or any of them, engaged in a combination or conspiracy in restraint of interstate and foreign trade and commerce in Sanitary Enameled Iron-Ware, in the manner set forth in Sub-division III of the petition, or otherwise, either among themselves or with any of the defendants named in the petition, or that since that time they, the other defendants, or any of them have been, or now are, engaged in such combination or conspiracy, or that interstate and foreign commerce has been or is now being restrained by any combination or conspiracy of the defendants among themselves, or with the other defendants, or any of them, in the manner alleged in the petition, or otherwise.

Defendants deny that by agreement either among themselves, or with the other defendants named in the petition, they have unlawfully, or at all, eliminated or suppressed competition between each other as to prices at which they are selling in interstate and foreign commerce their products in Sanitary Enameled Iron-Ware, or that they have unlawfully, or at all, fixed or established, or are now maintaining uniform prices and terms of sale to their respective customers.

The defendants deny that the discounts which the defendants named in the petition quote and allow to jobbers in carrying on such commerce are arrived at by agreement between the defendants among themselves, or that each defendant quotes and allows such discounts only as agreed upon, known to and accepted by the other defendants named in the petition.

Defendants aver that each of the corporation defendants here answering has separately taken a license from the defendant, Edwin L. Wayman, under Letters Patent of the United States No. 633,941, issued September 26, 1899, to James W. Arrott, Jr., for a dredger for pulverulent material, No. 949,625, issued February 15, 1910, to E. Ditheridge for a pneumatic sieve, and No. 939,918, issued November 9, 1909, to William Lindsay for an enameling powder distributer, which licenses are similar to Exhibit 8 attached to the petition, and that licensed Sanitary Enamel Iron-Ware is sold by

the defendants to jobbers under agreements similar to Exhibit 9 attached to the petition, but the defendants beg leave, upon the hearing of this cause, to refer to the originals of said licenses and said Jobbers' License Agreement for greater particularity And, except as herein admitted, the defendants deny the allegations contained in the two full paragraphs on page 12 of the petition.

Defendants deny that the combination alleged in the paragraph commencing at the bottom of page 12 of the petition exists, or that the result of the alleged combination is that throughout the United States all purchasers and users of the aforesaid products of Sanitary Enameled Iron-Ware are obliged to pay the same prices, or that such prices have been or are now fixed by the defendants named in the petition by mutual agreement, or otherwise, without competition with each other or otherwise.

Defendants deny that they, or any of them, have devised means by which each of them is advised of the amount of output of each of the other defendants named in the petition in order that thereby they may, by agreement, limit and restrict respective outputs as may seem advisable; and aver that they do not derive, under the terms of the licenses, knowledge of the output of any of the defendants named in the petition, and aver that at no time is any information so gained for the purpose of limiting and restricting their respective outputs.

Defendants deny that they have divided the United States into certain territorial or geographical zones, and they further deny that by the alleged system of dividing the United States into zones, or any other system of contracts, jobbers are restricted in making sales to the zone in which such jobber is located. They deny that there is any arrangement whereby the jobber is not allowed to sell outside of his alleged zone. They deny that the manufacturers have adopted the feature alleged, or any other unlawful feature, to restrict the competition between jobbers and to enable them to hold the jobbers firmly to the alleged selling arrangement and to the resale prices fixed by the combination, the existence of which alleged selling arrangement and said alleged combination defendants deny; and defendants aver that the defendant, Wayman, has separately licensed the several defendant corporations upon terms more fully set forth in said licenses and Jobbers' License Agreements, to the originals of which for greater particularity the defendants beg leave to refer upon the hearing of this cause; except as stated, the defendants deny all the allegations in said second paragraph on page 13 of the petition.

The defendants deny that among themselves or by agreement with the other defendants named in the petition, or otherwise, they have largely and unreasonably increased the prices at which they sell their products to jobbers; defendants deny that the defendants have more particularly advanced the re-sale prices of jobbers by their alleged system of contracts controlling re-sale prices, and aver that there is no agreement among the defendants named in the petition, or any of them, as alleged.

The defendants deny that the defendants named in the petition

or any of them, are co-operating in fighting the manufacturers of Sanitary Enameled Iron-Ware, or dealers therein, in interstate commerce who have not become parties to the alleged combination, and deny the existence of the alleged combination; and the defendants further deny that all of the defendants, or any of them, have united or are engaged in a common effort to force the said manufacturers or dealers into the alleged combination, or to drive them out of business.

Defendants deny the other allegations in said paragraph contained and aver that the terms upon which the several manufacturers sell to jobbers are fixed in the licenses which the defendant, Wayman, has given, to the originals of which for greater particularity the defendants beg leave to refer upon the hearing of this cause.

Defendants deny that they, or any of the defendants named in the petition, have been establishing and enforcing a system of severe penalties which are imposed upon such members of the alleged combination as depart from the alleged rules respecting prices and terms fixed by the alleged combination, and deny that there is any combination among the defendants, or any of them. Defendants deny each and every other allegation in the first full paragraph of said petition on page 14, and aver that the full terms upon which the several manufacturers, defendants herein, are licensed, are set forth in the licenses above referred to, to the originals of which for greater particularity the defendants beg leave to refer upon the hearing of this cause.

IV.

Defendants deny that the defendants named in the petition, or any of them, have entered into any combination of the character described in the petition, or otherwise, and further deny each and every other allegation in said first paragraph of Sub-division IV; and aver that the licenses which the defendant, Wayman, has given to the various licensees have been given by the defendant, Wayman, and accepted by the defendants in good faith and upon the advice of counsel to the effect that such licenses were based upon the patent laws of the United States and that defendants are advised and believe the same to be lawful, and defendants are informed that the other defendants named in the petition herein have been similarly advised and entertain similar beliefs.

Defendants deny the alleged conditional assignment of the three patents, or any of them, referred to in the said petition in paragraph 2 of Sub-division IV., or that the defendant, Wayman, was selected as the assignee thereof by agreement of the defendants or any of them, or any of the defendants named in the petition, and defendants deny each and every of the other allegations in said paragraph contained.

Defendants aver that the defendant Wayman is the owner of the three patents specified in the full paragraph on page 15 of the petition, and that he purchased same from certain of the defendants named in the petition pursuant to, as defendants are informed and believe, certain several options.

And defendants further aver that the contracts under which said defendant Wayman purchased the said patents are, as defendants are informed and believe, in writing, to the originals of which for greater particularity the defendants beg leave to refer on the trial of this cause.

Except as averred the defendants deny that the said purchases were made as the result of any agreement between the defendant Wayman and these answering defendants, or any of them, or any of the defendants named in the petition; and further deny, except as herein stated, each and every allegation in said full paragraph on page 15 contained.

Defendants admit that prior to the granting of the licenses by defendant, Wayman, to the various defendants named in the petition, certain of them had manufactured their product without the use of the inventions covered by such patents, and the defendants admit that the inventions covered by the said Letters Patent are useful and valuable in the manufacture of Sanitary Enameled Ironware; but defendants deny each and every other allegation in the first full paragraph on page 16 of the petition contained.

Defendants deny that before the assignments to the defendant, Wayman, of the Letters Patent referred to were made they had agreed either with him, or among themselves, or with any of the defendants named in the petition, upon all the essential features of the licensing agreement. Defendants deny any agreement among themselves, or with the other defendants named in the petition, or any of them, whereby defendant, Wayman, was to become the ostensible licensor, or that he was the ostensible licensor, and deny that a price list had been agreed upon between defendant, Wayman, and these defendants, or among themselves, or with any of the other defendants named in the petition, and they deny each and every other allegation in said paragraph contained, and aver that there was no agreement among the manufacturers and aver that before any agreement had been made with any manufacturer defendant Wayman had secured an option for the purchase of Arrott and other patents.

Defendants admit that Exhibits 8, 9 and 10 respectively, attached to the petition, are generally correct copies of the manufacturers' license agreement, the jobbers' license agreement, and a part of the price list, but for greater particularity beg leave to refer to the originals thereof upon the trial of this action.

Defendants deny that Exhibits 1 to 7, attached to the petition, evidence the manner in which the license arrangement was arrived at; that Exhibits 11 to 17, attached to the petition, illustrate the methods of the defendants and the effect of the combination upon independent manufacturers and jobbers who have not signed the license agreements, and beg leave upon the trial hereof to refer to the originals of said exhibits for greater particularity.

Defendants deny that all the terms and conditions of the contracts and agreements which together make up the alleged licensing arrangement had been agreed upon by all the defendants, or any of them, prior to the assignment of the patents to the defendant Way-

man. The defendants deny that each defendant stipulated, as a condition precedent to his executing the license agreement, that all the others should execute a similar agreement. Defendants deny the allegation that no defendant would have executed the agreement unless he had been certain that all of the other defendants would execute it. Defendants deny that the agreement on the part of all of the defendants to enter into the license arrangement was a condition precedent to the assignment of the patents to defendant Wayman, and defendants deny the existence of any agreement on the part of all the defendants, or any of them, to enter into the license agreement as a condition precedent to the assignment to defendant Wayman. Defendants deny the allegation that there would not have been an assignment to the defendant Wayman, or that no license agreement with any of the defendants would have been arrived at if all the corporation defendants had not agreed to go into the alleged scheme. Defendants deny the allegation in the petition that all the parties to the alleged arrangement were not seeking the use of a valid and essential patent necessary in the carrying on of their business, and defendants further deny that they were engaged in a price fixing plan to wrongfully and unlawfully eliminate competition; and deny each and every other allegation in said paragraph on pages 17 and 18 of the petition contained.

V.

Defendants deny each and every allegation in Subdivision V of the petition contained.

VI.

Defendants deny all the allegations contained in Sub-division VI. of the petition, except that they admit that the defendants A. Weiskittel & Son Company, Anton Weiskittel and John D. Heise are located and doing business within the State and District of Maryland, and that said individual defendants reside therein.

Furthermore, and for a more complete answer, the defendants say:

VII.

That prior to the invention of James W. Arrott, Jr., covered by Letters Patent of the United States No. 633,941, issued September 26, 1899, to said Arrott for enameling sanitary enameled iron-ware, Sanitary Enameled Iron-Ware was enameled by a hand process. This process consisted generally of sifting over the surface of the Iron-Ware, when heated to a red heat, the enameling powder. Enameling powder is supposed and intended to consist of such materials as when fused to form on the iron to be enameled a hard, impenetrable, insoluble, smooth and glossy surface. A sieve containing a quantity of the powder was attached to the end of a handle. The workman held the handle of the sieve with one hand and arm and moved the sieve horizontally over the surface of the iron-ware to be enameled,

at the same time striking the handle with his other hand to cause the sieve to vibrate and sift the enameling powder over the surface of the iron-ware to be enameled. The powder jetted through the sieve in intermittent puffs or waves with each blow, and this, and the physical strain and intense heat caused, in a great many instances, the unequal distribution of the powder over the surface of the ware, which resulted in the enameling being wavy or rippled, uneven, or otherwise defective, and rendered the article enameled unsightly, less durable and unsalable at a profit. The workman on account of the intense heat went through the enameling process as hurriedly as possible, with the result, in a great many instances, that the articles produced were worthless and had to be thrown away, or were so-called "seconds" and had to be sold at a price resulting in little, or no profit to the manufacturer. The process was laborious and slow and consequently more readily fusible enameling powder had to be used which resulted in a less impervious, insoluble and durable and permanently glossy surface. Furthermore, it was injurious to the health of the workmen and it was difficult to secure men physically capable of performing the work, and more difficult to train such men, as were capable, to do the work properly.

Arrot's invention, by using a mechanically operated agitator, in connection with the sieve, made possible the flowing of the enameling powder in a continuous stream, enabling the enameler to distribute the enameling powder evenly, equally and uniformly over the surface of the article to be enameled, as though the powder were a flowing thin liquid. With Arrott's invention, a workman can, by touching a valve button, secure a rapping action which is rapid, continuous and uniform. At the same time his hands are free both to sustain the load and to move the sieve over the surface and get a uniform lateral powder distribution. The blows are so rapid and regular, that the powder, instead of jetting through the sieve in a puff or distinct wave with each hand-struck blow, flows in a practically continuous regular sheet. Arrott's invention enables the enameler to be under a much less strain in the face of terrific heat, it enables him to enamel a very much greater number of articles per hour, and the work can be done by an average man of less physical strength than was required in the former process, and he can be more easily and quickly taught to do the enameling successfully. Arrott's invention is labor and material saving, and effective, and, in relieving to a degree labor under fierce heat conditions, arose to the plane of the humane.

VIII.

The manufacturers of Sanitary Enameled Iron-Ware recognized the necessity of Arrott's invention to the successful manufacture of Sanitary Enameled Iron-Ware. Many of them used the invention described in the patent, or equivalent means, for enameling the iron-ware. In all cases the owner of the patent claimed that such manufacturers were infringing the patent and demanded an accounting and damages under threat of suit for infringement. Some of the manufacturers settled with the owner of the

Arrott patent by paying a lump sum of money in settlement of the claim for damages and claimed to have abandoned the use of the invention. Others sought to gain time well knowing that in the end they would have to stand suit for infringement, pay damages, abandon the use of the invention, or take a license under the patent. Others without formally taking a license, made periodical payments to the owner of the patent in order to be allowed to continue the use of the invention. Still others were sued for infringement and judgments obtained against them by the owner of the patent, which judgments were settled by the payment of a sum of money.

IX.

Prior to the defendant Wayman granting the licenses herein referred to, the Arrott patent had been sustained by the Courts in several cases.

X.

For the reasons stated, the art was in a very unsatisfactory condition. No means had been discovered of accomplishing the result produced by the use of the Arrott invention without laying the user of such means open to a suit for infringement by the owner of the Arrott patent. The manufacturers using the process in use prior to Arrott's invention were unable to successfully compete with those using the Arrott invention, and moreover, produced a disproportionate number of defective, unsightly and substantially unsaleable articles. The consumer was deceived and defrauded and the use of Sanitary Enameled Iron-Ware lessened and its reputation depreciated by defective articles being palmed off on the consumer as not defective.

XI.

The defendants had known the defendant Wayman as a manufacturer of enameled bath tubs, being connected with the Seamless Steel Bath Tub Company of Detroit, Michigan, and as Actuary of the Sanitary Enameled Iron-Ware Association, of which the defendants were members, and as such he was familiar with the needs of the trade and its condition, and knew the value of the Arrott invention.

That after the said Wayman had secured an option upon the invention covered by the Arrott and other patents, he discussed with the defendants the question whether they would accept a license to use said inventions, if he exercised his options and purchased said inventions.

That thereafter and during the month of March 1910 the defendant Wayman called upon the defendants and presented a form of agreement, substantially the same as Exhibit 3 attached to the petition herein, upon different days and at different places, and some of the defendants, as appears from the signatures appended to the instrument, signed the same.

That thereafter and on or about the 29th and 30th days of March 1910, at the invitation of the defendant Wayman, the defendants came to New York and met the defendant Wayman and his counsel At said meetings a plan of a license under the various inventions covered by the Letters Patent referred to was explained in detail by Mr. Wayman and his counsel, and the legal feature thereof discussed The plan of license proposed and the terms proposed were generally acceptable to the defendants, and thereupon the defendants appointed a Committee from their number to negotiate on behalf of the manufacturers, on the one hand, with Mr. Wayman, on the other hand, as to the terms and the details of the terms upon which the said licenses could be obtained from him.

That thereafter the said Wayman prepared and presented to the several defendants proposed license agreements, proposed jobbers' license agreements, and proposed price lists, all of which were accepted by each of the defendants in the form as they now exist.

That defendants took advice of their respective counsel as to the plan as described, before accepting the said licenses, and were advised that the plan as described was covered by the Patent Laws of the United States, was entirely lawful and was not in violation of any law of the United States, or of any of the several States.

XII.

That each of the defendants fully realized the value of the use of the inventions covered by the Letters Patent referred to and that it would cause numerous economies in material, labor, time consumed, increase of output, and avoid the great loss caused by the production of defective articles. The defendants severally, therefore, readily accepted the proposition as made by Wayman as being very greatly to their benefit.

The defendants acted in entire good faith and in the belief that they were doing what they had an entire legal right to do.

That since the defendant Wayman issued the licenses referred to the defendants named in the petition herein have been and are now using the inventions covered by said Letters Patent, and as to which they are licensed, in the manufacture of Sanitary Enameled Iron-Ware. Defendants are advised by their respective counsel, and therefore aver that the said licenses are in all respects lawful, and that in acting in accordance therewith they are not violating the laws of the United States, or of any of the several States, and particularly are not violating the Act of Congress commonly known as the Sherman Anti-Trust Act.

And the defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged: without this, there is any other matter, cause or thing in said petition contained material or necessary for the defendants to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of the defendants, all which matters and things the defendants are ready and willing to aver, maintain and prove as this honorable court shall direct; and humbly pray to be hence dis-

missed, with their reasonable costs and charges in this behalf most wrongfully sustained.

A. WEISKITTEL & SON CO.,
By ANTON WEISKITTEL, *Pres.*
JOHN D. HEISE.
ANTON WEISKITTEL.
UNITED STATES SANITARY MFG. CO.
A. H. CLINE, JR., *Sec'y.*
A. H. CLINE, JR.
THE BARNES MFG. CO.
T. R. BARNES, *S'c'y & Gen. M'g'r.*
T. R. BARNES.
THE McCRUM HOWELL CO.
LLOYD G. McCRUM, *Pres't.*
LLOYD G. McCRUM.
HOWARD T. GATES.
NATIONAL SANITARY MFG. CO.
F. G. BORDEN, *Pres.*
F. G. BORDEN.
THE DAY WARD CO.,
By A. G. WARD, *V. P.*
A. G. WARD.
UNION SANITARY MFG. CO.
E. V. BRIGHAM, *Sec'y & Treas.*
E. V. BRIGHAM.
KERNER MFG. CO.
CARL FALK, *Vice Pres't.*
THE CAHILL IRON WORKS.
JOHN J. MAHONEY, *V. P. & Sec.*
JOHN J. MAHONEY.
F. H. CALDWELL.
COLWELL LEAD CO.
J. T. DURYEA, *Pres.*
J. T. DURYEA.
B. O. TILDEN.
THE HUMPHRYES MFG. CO.,
By REID CARPENTER, *Secretary.*
S. N. FORD, *Pres't.*
REID CARPENTER.
C. H. VOEGELE.
J. A. FRAUENHEIM.
W. C. WINFIELD.
CHARLES ARROTT.
L. C. HUESMANN.
D. W. DAVIS.
WHEELING ENAMELED IRON CO.,
By J. E. WRIGHT, *Pres't.*
J. E. WRIGHT.
GEORGE W. FRANZHEIM.
McVAY WALKER CO.,
By THOS. WALKER, *Pres't.*

THOS. WALKER.
ALEX. C. WALKER.
NOBLE, JACKSON & HUBBARD,
CARROLL T. BOND.
Solicitors for Defendants.

HERBERT NOBLE,
EDWIN E. JACKSON, JR.,
WILLIAM L. MARBURY,
Of Counsel.

STATE OF NEW YORK,
County of New York, ss:

Anton Weiskittel, being duly sworn, deposes and says:
I am the President of A. Weiskittel & Son Co., one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

ANTON WEISKITTEL.

Sworn to before me this 30th day of September, 1910.

[NOTARIAL SEAL.] C. MACINNES,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF NEW YORK,
County of New York, ss:

T. R. Barnes, being duly sworn, deposes and says:
I am the Secretary of The Barnes Manufacturing Company, one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

T. R. BARNES.

Sworn to before me this 30th day of September, 1910.

[NOTARIAL SEAL.] C. MACINNES,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF NEW YORK,
County of New York, ss:

J. J. Mahoney, being duly sworn, deposes and says:
I am the Vice-President of The Cahill Iron Works, one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true of my own knowledge, except as to the matters therein stated to be al-

leged upon information and belief, and as to those matters I believe it to be true.

JOHN J. MAHONEY.

Sworn to before me this 30th day of September, 1910.

[NOTARIAL SEAL.] C. MACINNES,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF NEW YORK,
County of New York, ss:

Jesse T. Duryea, being duly sworn, deposes and says:

I am the President of Colwell Lead Company, one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true of my own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

JESSE T. DURYEA.

Sworn to before me this 30th day of September, 1910.

[NOTARIAL SEAL.] C. MACINNES,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF NEW YORK,
County of New York, ss:

A. G. Ward, being duly sworn, deposes and says:

I am the Vice-President of the Dov-Ward Company, one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true of my own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

A. G. WARD, *V. P.*

Sworn to before me this 30th day of September, 1910.

[NOTARIAL SEAL.] C. MACINNES,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF NEW YORK,
County of New York, ss:

Lloyd G. McCrum, being duly sworn, deposes and says:

I am the President of the McCrum-Howell Company, one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true of my own knowledge except as to the matters therein stated to be al-

leged upon information and belief, and as to those matters I believe it — be true.

LLOYD G. McCRUM.

Sworn to before me this 30th day of September, 1910.

[NOTARIAL SEAL.] C. MacINNES,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF NEW YORK,
County of New York, ss:

Frank G. Borden, being duly sworn, deposes and says:

I am the President of the National Sanitary Manufacturing Company, one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

F. G. BORDEN.

Sworn to before me this 30th day of September, 1910.

[NOTARIAL SEAL.] C. MacINNES,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF NEW YORK,
County of New York, ss:

E. V. Brigham, being duly sworn, deposes and says:

I am the Secretary of Union Sanitary Manufacturing Company, one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true of my own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

E. V. BRIGHAM.

Sworn to before me this 30th day of September, 1910.

[NOTARIAL SEAL.] C. MacINNES,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF NEW YORK,
County of New York, ss:

A. H. Cline, Jr., being duly sworn, deposes and says:

I am the Secretary of United States Sanitary Manufacturing Company, one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true of my own knowledge, except as to the matters

therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

A. H. CLINE, Jr.

Sworn to before me this 30th day of September, 1910.

[NOTARIAL SEAL.] C. MacINNES,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF NEW YORK,
County of New York, ss:

Carl Falk, being duly sworn, deposes and says: I am Vice-President of the Kerner Manufacturing Company, one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true of my own knowledge except as to the matters herein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

CARL FALK.

Sworn to before me this 30th day of September, 1910.

[NOTARIAL SEAL.] C. MacINNES,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF NEW YORK,
County of New York, ss:

Anton Weiskittel, T. R. Barnes, J. J. Mahoney, Jesse T. Duryea, A. G. Ward, Lloyd G. McCrum, Howard T. Gates, Frank G. Borden, E. V. Brigham and A. H. Cline, Jr., Bert O. Tilden, being severally duly sworn depose and say, and each for himself deposes and says, that he is one of the defendants named in the foregoing answer; that he has read the foregoing answer and is familiar with the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

ANTON WEISKITTEL.
JOHN J. MAHONEY.
LLOYD G. McCRUM.
JESSE T. DURYEA.
A. G. WARD.
T. R. BARNES.
A. H. CLINE, Jr.
F. G. BORDEN.
HOWARD T. GATES.
E. V. BRIGHAM.
BERT O. TILDEN.

Severally sworn to before me this 30th day of September, 1910.
[NOTARIAL SEAL.] C. MACINNES,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Reid Carpenter, being duly sworn, deposes and says:
I am Secretary of the Humphryes Manufacturing Company, one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

REID CARPENTER.

Sworn to before me this 1st day of October, 1910.
[NOTARIAL SEAL.] AGNES C. WAY,
Notary Public.

My Commission Expires January 16th, 1913.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Reid Carpenter, being duly sworn, deposes and says:
That he is one of the defendants named in the foregoing answer; that he has read the foregoing answer and is familiar with the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

REID CARPENTER.

Sworn to before me this 1st day of October, 1910.
[NOTARIAL SEAL.] AGNES C. WAY,
Notary Public.

My Commission Expires January 16th, 1913.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

C. H. Voegele, being duly sworn, deposes and says: I am one of the defendants named in the foregoing answer; I have read the foregoing answer and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters I believe it to be true.

C. H. VOEGELE.

Sworn to before me this 1st day of October, 1910.
[NOTARIAL SEAL.] AGNES C. WAY,
Notary Public.

My Commission Expires January 16th, 1913.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

J. A. Frauenheim, being duly sworn, deposes and says: I am one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

J. A. FRAUENHEIM.

Sworn to before me this 1st day of October, 1910.

[NOTARIAL SEAL.] AGNES C. WAY,
Notary Public.

My Commission Expires January 16th, 1913.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

W. C. Winfield, being duly sworn, deposes and says: I am one of the defendants named in the foregoing answer; I have read the foregoing answer and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

W. C. WINFIELD.

Sworn to before me this 1st day of October, 1910.

[NOTARIAL SEAL.] AGNES C. WAY,
Notary Public.

My Commission Expires January 16th, 1913.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Charles Arrott, being duly sworn, deposes and says: I am one of the defendants named in the foregoing answer; I have read the foregoing answer and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

CHARLES ARROTT.

Sworn to before me this 1st day of October, 1910.

[NOTARIAL SEAL.] AGNES C. WAY,
Notary Public.

My Commission Expires January 16th, 1913.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

L. C. Huesman, being duly sworn, deposes and says: I am one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

L. C. HUESMANN.

Sworn to before me this 1st day of October, 1910.
[NOTARIAL SEAL.] AGNES C. WAY,
Notary Public.
My Commission Expires January 16th, 1913.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

D. W. Davis, being duly sworn, deposes and says: I am one of the defendants named in the foregoing answer; I have read the foregoing answer and know the contents thereof, and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

D. W. DAVIS.

Sworn to before me this 1st day of October, 1910.
[NOTARIAL SEAL.] AGNES C. WAY,
Notary Public.
My Commission Expires January 16th, 1913.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

J. E. Wright, being duly sworn, deposes and says:
I am President of Wheeling Enameled Iron Company, one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

J. E. WRIGHT.

Sworn to before me this 1st day of October, 1910.
[NOTARIAL SEAL.] AGNES C. WAY,
Notary Public.
My Commission Expires January 16th, 1913.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

J. E. Wright and George W. Franzheim, being severally duly sworn, deposes and say, and each for himself deposes and says:

That he is one of the defendants named in the foregoing answer; that he has read the foregoing answer and is familiar with the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

J. E. WRIGHT.
GEORGE W. FRANZHEIM.

Severally sworn to before me this the 1st day of October, 1910.

[NOTARIAL SEAL.] AGNES C. WAY,
Notary Public.

My Commission Expires January 16th, 1913.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Thomas Walker, being duly sworn, deposes and says:

I am President of McVay-Walker Company, one of the defendants named in the foregoing answer; I have read the foregoing answer and know the contents thereof; the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

THOS. WALKER.

Sworn to before me this 1st day of October, 1910.

[NOTARIAL SEAL.] AGNES C. WAY,
Notary Public.

My Commission Expires January 16th, 1913.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Thomas Walker, being duly sworn, deposes and says:

That he is one of the defendants named in the foregoing answer; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

THOS. WALKER.

Sworn to before me this 1st day of October, 1910.

[NOTARIAL SEAL.] AGNES C. WAY,
Notary Public.

My Commission Expires January 16th, 1913.

UNITED STATES OF AMERICA,
District of Maryland, ss:

John D. Heise, being duly sworn, deposes and says: I am one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

JOHN D. HEISE.

Sworn to before me this 11th day of February, 1911.

[Seal of Court.]

ARTHUR L. SPAMER,
Clerk U. S. Circuit Court for the District of Maryland.

STATE OF TENNESSEE,
County of Hamilton, ss:

F. H. Caldwell, being duly sworn, deposes and says: I am one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

F. H. CALDWELL.

Sworn to before me this 6th day of Oct., 1910.

[NOTARIAL SEAL.] C. W. K. MEACHAM,
Notary Public.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Alexander C. Walker, being duly sworn, deposes and says:
I am one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

ALEX. C. WALKER.

Sworn to before me this 14th day of October, 1910.

[NOTARIAL SEAL.] AGNES C. WAY,
Notary Public.

My Commission Expires January 16th, 1913.

STATE OF OHIO,
County of Richland, ss:

S. N. Ford, being duly sworn, deposes and says: I am one of the defendants named in the foregoing answer; I have read the fore-

going answer and am familiar with the contents thereof; the same is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

[CORPORATE SEAL.] S. N. FORD.

Sworn to before me this — day of October, 1910.

[NOTARIAL SEAL.] HARRY DE YARMON,
Notary Public.

My Commission expires July 15th, 1911.

Separate Answer of Colwell Lead Company, Jesse T. Duryea and Bert O. Tilden.

Filed February 11, 1911.

In the Circuit Court of the United States for the District of Maryland.

UNITED STATES OF AMERICA
v.
STANDARD SANITARY MANUFACTURING COMPANY et al.

In Equity.

Order Granting Leave to File Amended or Supplemental Answer of Colwell Lead Company, Jesse T. Duryea and Bert O. Tilden.

Upon application of solicitors for the defendants Colwell Lead Company, Jesse T. Duryea and Bert O. Tilden, and upon the written consent of solicitors for the petitioner, leave is hereby granted to the said defendants Colwell Lead Company, Jesse T. Duryea and Bert O. Tilden to file in this proceeding their joint and several amended or supplemental answer to the petition, which answer is hereto attached.

JOHN C. ROSE, *Judge.*

The petitioner consents to the passage of the above order granting leave to the defendants Colwell Lead Company, Jesse T. Duryea and Bert O. Tilden to file the attached answer.

JOHN PHILIP HILL,
U. S. Attorney.
EDWIN P. GROSVENOR,
Spec. Ass't to Att'y Gen'l.

In the Circuit Court of the United States for the District of Maryland.

No. —. In Equity.

UNITED STATES OF AMERICA, Petitioner,
against
STANDARD SANITARY MANUFACTURING COMPANY and Others, Defendants.

The Joint and Several Answer of the Colwell Lead Company, Jesse T. Duryea and Bert O. Tilden, Defendants, to the Petition Herein of the United States of America, Petitioner.

These defendants severally now and at all times hereafter saving and reserving to themselves all and all manner of benefit or advantage of exception or otherwise, that can or may be had or taken to the many errors, uncertainties, insufficiencies and imperfections in the said petition contained, for answer thereto, or to so much thereof as these defendants are advised is material and necessary for them to answer to, say:

I.

These defendants have no knowledge and have not been informed, save by the Petitioner's petition, and they cannot set forth as to their belief, or otherwise, whether the United States of America, acting under the direction of the Attorney General, brings this proceeding in equity against these defendants and the other defendants named in the petition, and of this they demand that the said petitioner shall furnish proof; and these defendants deny the allegations contained in the preamble to said petition, that these defendants and the other defendants named in the petition, or any of them, are violating the provisions of the Act of Congress passed July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies." And these defendants deny that the agreements referred to in the petition are contracts, combinations or conspiracies in restraint of trade in Sanitary Enameled Iron-Ware among the several States and with foreign nations, which should either be prevented or restrained.

These defendants deny that the defendant Bert O. Tilden participates in the management and direction of the business of the Colwell Lead Company, but on the contrary allege his personal time and attention is devoted to the business of the American Sanitary Company, a corporation of which the said Bert O. Tilden is President, and these defendants allege that the duties of the said Bert O. Tilden as Secretary of the Colwell Lead Company are purely nominal, except as hereinbefore alleged.

These defendants suggest that the allegation in the last paragraph at the bottom of page eight of the petition, as they are advised, is purely a conclusion which they need not answer, although to their

silence in this behalf no admission as to the truth of such conclusion is to be imputed.

II.

These defendants deny that they now are or they at any time have been engaged in selling and shipping Enameled Iron-Ware into States of the United States, or in selling or shipping the same to foreign countries; and these defendants deny that they have any agents in different parts of the United States who solicit orders for their product, or that they ship any such Enameled Iron-Ware pursuant to such orders from the factory of the Colwell Lead Company to any customers located in other States; and these defendants deny that they are engaged in Interstate or foreign trade or commerce in Enameled Iron-Ware within the meaning of the Act of Congress in said petition referred to, but on the contrary these defendants allege that they manufacture at Elizabeth, New Jersey, Enameled Iron-Ware solely for the use of the Colwell Lead Company; that the manufactured product is shipped from said factory to the warerooms of the Colwell Lead Company in the City of New York and is there sold by the said Colwell Lead Company locally to plumbers, plumbing contractors and the public generally.

These defendants have no knowledge and have not been informed, save by the petition herein, and except as so informed, defendants cannot set forth as to their belief, or otherwise, whether the only manufacturers and dealers in articles of similar character, that is Sanitary Enameled Iron-Ware, other than the defendants named in said petition are J. M. Kohler Sons Company at Sheboygan, Wis., The Iron City Sanitary Manufacturing Company of Pittsburgh, Pa., Blairsville Enameled Ware Company of Blairsville, Pa., Clymer Manufacturing Comp- of Indiana, Pa., Louis Lipp of Cincinnati, Ohio, and Washington Iron Works of Los Angeles, Cal., and as to these facts, these defendants demand that petitioner shall furnish proof.

Defendants have no knowledge and have not been informed, save by the petition herein, and except as so informed cannot set forth as to their belief, or otherwise, whether of the total volume of interstate and foreign trade and commerce in said products of Sanitary Enameled Iron-Ware being carried on by the defendants, and by the six manufacturers and dealers named in the foregoing paragraph, the defendants named in the petition have and control 85% or any similar amount, and as to these facts defendants demand that petitioner shall furnish proof.

These defendants suggest that the allegations in the last paragraph of Sub-division II, page II of the petition are, as they are advised, purely conclusions which they need not answer although to their silence in this behalf no admission as to the truth of such conclusions is to be imputed; but, if such allegations require an answer, defendants deny any knowledge, information or belief with respect thereto and demand that petitioner shall furnish proof.

These defendants deny that they or any of them or any of the other defendants named in the petition are, or have been, engaged in any unlawful combination or conspiracy in restra-nt of interstate

trade or commerce, or in any unlawful attempt to monopolize the same, as described in the last paragraph of Sub-division II on page 11 of the said petition, or otherwise.

III.

These defendants deny that during the latter part of the year 1909, or early in 1910, or at any time they, or any of them, engaged in a combination or conspiracy in restraint of interstate and foreign trade and commerce in Sanitary Enameled Iron-Ware, in the manner set forth in Sub-division III of the petition, or otherwise, either among themselves or with any of the defendants named in the petition, or that since that time they the other defendants, or any of them have been, or now are, engaged in such combination or conspiracy, or that interstate and foreign commerce has been or is now being restrained by any combination or conspiracy of the defendants among themselves, or with the other defendants, or any of them, in the manner alleged in the petition, or otherwise.

These defendants deny that by agreement either among themselves, or with the other defendants named in the petition, they have unlawfully, or at all, eliminated or suppressed competition between each other as to prices at which they are selling in interstate and foreign commerce their products in Sanitary Enameled Iron-Ware, or that they have unlawfully, or at all, fixed or established, or are now maintaining uniform prices and terms of sale to their respective customers.

These defendants deny that the discounts which the defendants named in the petition quote and allow to jobbers in carrying on such commerce are arrived at by agreement between the defendants among themselves, or that each defendant quotes and allows such discounts only as agreed upon, known to and accepted by the other defendants named in the petition.

These defendants deny that they are observing any method of selling products of Sanitary Enameled Iron-Ware to jobbers whereby each jobber is compelled to sell at certain re-sale prices.

These defendants allege that they never have at any time during the last four years or more nor do they now sell to any jobbers of plumbing supplies whatsoever, not, however, for the reason that they have agreed not to do so with any other defendant in this action, but for the reason that the business of the Colwell Lead Company is itself the business of a jobber in plumbing supplies, and that the business of the said Colwell Lead Company and these defendants have always been and still is selling of all plumbing supplies direct to plumbers, plumbing contractors and the public generally.

These defendants deny that they have agreed that they will not sell any products to any person or company who is not recognized as a jobber, or that these defendants confine their sales to persons whom the defendants consider to be legitimate jobbers of Sanitary Enameled Iron-Ware.

These defendants further allege that prior to the times set forth in the said petition, the defendant, Colwell Lead Company, had taken a license under letters patent of the United States, No. 633,941,

issued September 26, 1899, to James W. Arrott, Jr., for a dredger for pulverulent material, and these defendants used the same at their factory at Elizabeth, New Jersey; and these defendants further allege that thereafter and in the spring of 1910, the said defendant, Colwell Lead Company, was required and did take a new license from one Edwin L. Wayman, who was then the owner of said letters patent, and likewise and at the same time took from him a license under United States Letters patent, No. 949,625, for a pneumatic sieve, and letters patent No. 939,918, for an enameling powder distributer, which licenses are somewhat similar to Exhibit A attached to the petition, but deponent begs leave upon the hearing of this cause to refer to the original of said license, but these defendants deny that Sanitary Enameled Iron-Ware is sold by these defendants to jobbers at all, and particularly, is not sold by these defendants to jobbers under any agreement whatsoever; and these defendants allege that they never at any time entered into any agreement similar to Exhibit 9 attached to the petition herein, or that they ever asked any person or corporation to execute any agreement similar to Exhibit 9. And, except as herein admitted, the defendants deny the allegations contained in the two full paragraph on page 12 of the petition.

These defendants deny that the combination alleged in the paragraph commencing at the bottom of page 12 of the petition exists, or that the result of the alleged combination is that throughout the United States all purchasers and users of the aforesaid products of Sanitary Enameled Iron-Ware are obliged to pay the same prices, or that such prices have been or are now fixed by the defendants named in the petition by mutual agreement, or otherwise, without competition with each other or otherwise.

These defendants deny that they, or any of them, have devised means by which each of them is advised of the amount of output of each of the other defendants named in the petition in order that thereby they may, by agreement, limit and restrict respective outputs as may seem advisable; and aver that they do not derive, under the terms of the licenses, knowledge of the output of any of the defendants named in the petition, and aver that at no time is any information so gained for the purpose of limiting and restricting their respective outputs.

These defendants deny that they have divided the United States into certain territorial or geographical zones, and they further deny that by the alleged system of dividing the United States into zones, or any other system of contract, jobbers are restricted in making sales to the zone in which such jobber is located. They deny that there is any arrangement whereby the jobber is not allowed to sell outside of his alleged zone. They deny that the manufacturers have adopted the feature alleged, or any other unlawful feature, to restrict the competition between jobbers and to enable them to hold the jobbers firmly to the alleged selling arrangement and to the re-sale prices fixed by the combination, the existence of which alleged selling arrangement and said alleged combination defendants deny.

These defendants deny that among themselves or by agreement with the other defendants named in the petition, or otherwise, they have largely and unreasonable increased the prices at which they sell their products to jobbers; these defendant deny that the defendants have more particularly advanced the re-sale prices of jobbers by their alleged system of contracts controlling re-sale prices, and aver that there is no agreement among the defendants named in the petition, or any of them, as alleged.

These defendants deny that the defendants named in the petition, or any of them, are co-operation in fighting the manufacturers of Sanitary Enameled Iron-Ware, or dealers therein, in interstate commerce who have not become parties to the alleged combination, and deny the existence of the alleged combination; and the defendants further deny that all of the defendants, or any of them, have united or are engaged in a common effort to force the said manufacturers or dealers into the alleged combination, or to drive them out of business.

These defendants deny the other allegations in said paragraph contained, and aver, that whatever terms are fixed in the license given by the defendant Wayman, upon which the several manufacturers sell to jobbers, are matters which do not in any way, shape or manner effect the business of these defendants, for the reason, as hereinbefore set forth, that these defendants have not at any time and do not sell to any jobbers of plumbing supplies whatsoever.

These defendants deny that they, or any of the defendants named in the petition, have been establishing and enforcing a system of severe penalties which are imposed upon such members of the alleged combination as depart from the alleged rules respecting prices and terms fixed by the alleged combination, and deny that there is any combination among the defendants or any of them. These defendants deny each and every other allegation in the first full paragraph of said petition on page 14, and aver that the full terms upon which the several manufacturers, defendants herein, are licensed, are set forth in the licenses above referred to, to the originals of which for greater particularity the defendants beg leave to refer upon the hearing of this cause.

IV.

These defendants deny that the defendants named in the petition, or any of them, have entered into any combination of the character described in the petition, or otherwise, and further deny each and every other allegation in said first paragraph of Sub-division IV; and aver that the licenses which the defendant, Wayman, has given to the various licensees have been given by the defendant, Wayman, and accepted by the defendants in good faith and upon the advice of counsel to the effect that such licenses were based upon the patents laws of the United States and that these defendants are advised and believe the same to be lawful, and these defendants allege that they accepted such licenses from the said Wayman for the reason that these defendants had for a considerable period prior thereto used the Arrott patents and had the same installed in their

factory at Elizabeth, New Jersey, and for the reason that they consider the same a necessity in the manufacture of Sanitary Enameled Iron-Ware for the use of the defendants only in their jobbing business conducted in the City of New York aforesaid; and for the further reason that the said license was the only form that these defendants could obtain a renewal of the existing license.

These defendants deny, as alleged in said Fourth paragraph on page 15 of the petition, that they are selling and shipping their products of Sanitary Enameled Iron-Ware throughout the United States and abroad, or that they are engaged in interstate or foreign trade or commerce.

These defendants deny the alleged conditional assignment of the three patents, or any of them, referred to in the said petition in paragraph 2 of Sub-division IV, or that the defendant, Wayman, was selected as the assignee thereof by agreement of the defendants, or any of them, or any of the defendants named in the petition, and defendants deny each and every of the other allegations in said paragraph contained.

These defendants aver that the defendant Wayman is the owner of the three patents specified in the full paragraph on page 15 of the petition, and that he purchased same from certain of the defendants named in the petition, pursuant to, as defendants are informed and believe, certain several options.

And these defendants further aver that the contracts under which said defendant Wayman purchased the said patents are, as these defendants are informed and believe, in writing, to the originals of which for greater particular-ly the defendants beg leave to refer on the trial of this cause.

Except as averred, these defendants deny that the said purchases were made as the result of any agreement between the defendant Wayman and these answering defendants, or any of them, or any of the defendants named in the petition; and further deny, except as herein stated, each and every allegation in said full paragraph on page 15 contained.

These defendants deny that prior to the granting of the license by the defendant Wayman these defendants had manufactured their product without the use of the invention covered by said patents, and these defendants admit that the inventions covered by the said letters patent are useful and valuable in the manufacture of Sanitary Enameled Iron-Ware; but these defendants deny each and every other allegation in the first full paragraph on page 16 of the petition contained.

These defendants deny that before the assignments to the defendant Wayman of the letters patent referred to were made they had agreed either with him or among themselves, or with any of the defendants named in the petition, upon all the essential feature of the licensing agreement. These defendants deny any agreement among themselves, or with the other defendants named in the petition, or any of them, whereby the defendant Wayman was to become the ostensible licensor, or that he was the ostensible licensor, and deny that a price list had been agreed upon between defendant

Wayman and these defendants, or among themselves, or with any of the other defendants named in the petition, and they deny each and every other allegation in said paragraph contained, and aver that there was no agreement among the manufacturers and aver that before any agreement had been made with any manufacturer, defendant Wayman had secured an option for the purchase of Arrott and other patents.

These defendants admit that Exhibit 8 attached to the petition is generally a correct copy of the form of the license issued by said Wayman, but these defendants have no knowledge or information sufficient to form a belief as to Exhibits 9 and 10, for the reason, as hereinbefore stated, that these defendants are not concerned with said agreements and have never entered into the same or any of them.

And these defendants specifically deny that they had any agreement or under-standing with any of the other defendants at any time prior to the time these defendants received their license aforesaid from said Wayman respecting the terms and conditions of said license, or that they had any knowledge or information with reference to the agreements existing between the other defendants with respect thereto.

These defendants deny that Exhibits 1 to 7, attached to the petition, evidence the manner in which the license arrangement was arrived at; that Exhibits 11 to 17, attached to the petition, illustrate the methods of the defendants and the effect of the combination upon independent manufacturers and jobbers who have not signed the license agreements, and beg leave upon the trial hereof to refer to the originals of said exhibits for greater particularity.

These defendants deny that all the terms and conditions of the contracts and agreements which together make up the alleged licensing arrangement had been agreed upon by all the defendants, or any of them, prior to the assignment of the patents to the defendant Wayman. These defendants deny that each defendant stipulated, as a condition precedent to his executing the license agreement, that all the others should execute a similar agreement. These defendants deny the allegation that no defendant would have executed the agreement unless he had been certain that all of the other defendants would execute it. These defendants deny that the agreement on the part of all of the defendants to enter into the license arrangement was a condition precedent to the assignment of the patents to defendant Wayman, and defendants deny the existence of any agreement on the part of all the defendants, or any of them, to enter into the license agreement as a condition precedent to the assignment to defendant Wayman. These defendants deny the allegation that there would not have been an assignment to the defendant Wayman, or that no license agreement with any of the defendants would have been arrived at if all the corporation defendants had not agreed to go into the alleged scheme. These defendants deny the allegation in the petition that all the parties to the alleged arrangement were not seeking the use of a valid and essential patent necessary in the carrying on of their business, and

defendants further deny that they were engaged in a price fixing plan to wrongfully and unlawfully eliminate competition; and deny each and every other allegation in said paragraph on pages 17 and 18 of the petition contained.

V.

These defendants deny each and every allegation in Sub-division V of the petition contained.

VI.

These defendants deny all the allegations contained in Subdivision VI of the petition, except that they admit that the defendants, A. Weislittel & Son Company, Anton Weiskittle and John D. Heise, are located and doing business within the State and District of Maryland, and that said individual defendants reside therein.

Furthermore, and for a more complete answer, these defendants say:

VII.

That prior to the invention of James W. Arrott, Jr., covered by letters patent of the United States No. 633,941, issued September 26, 1899, to said Arrott for enameling sanitary enameled iron-ware, Sanitary Enameled Iron-Ware was enameled by a hand process. This process consisted generally of sifting over the surface of the Iron-Ware, when heated to a red heat, the enameling powder. Enameling powder is supposed and intended to consist of such materials as when fused to form on the iron to be enameled a hard, impenetrable, insoluble, smooth and glossy surface. A sieve containing a quantity of the powder was attached to the end of a handle. The workman held the handle of the sieve with one hand and arm and moved the sieve horizontally over the surface of the iron-ware to be enameled, at the same time striking the handle with his other hand to cause the sieve to vibrate and sift the enameling powder over the surface of the iron-ware to be enameled. The powder jetted through the sieve in intermittent puffs or waves with each blow, and this, and the physical strain and intense heat caused, in a great many instances, the unequal distribution of the powder over the surface of the ware, which resulted in the enameling being wavy or rippled, uneven, or otherwise defective, and rendered the article enameled unsightly, less durable and unsaleable at a profit. The workman on account of the intense heat went through the enameling process as hurriedly as possible, with the result, in a great many instances, that the articles produced were worthless and had to be thrown away, or were so-called "seconds" and had to be sold at a price resulting in little, or no profit to the manufacturer. The process was laborious and slow and consequently more readily fusible enameling powder had to be used which resulted in a less impervious, insoluble and durable and permanently glossy surface. Furthermore, it was injurious to the health of the workmen and it was difficult to secure men physically capable of performing the work, and more difficult to train such men, as were capable, to do the work properly.

Arrott's invention, by using a mechanically operated agitator, in connection with the sieve, made possible the flowing of the enameling powder in a continuous stream, enabling the enameler to distribute the enameling powder evenly, equally and uniformly over the surface of the article to be enameled, as though the powder were a flowing thin liquid. With Arrott's invention, a workman can, by touching a valve button, secure a rapping action which is rapid, continuous and uniform. At the same time his hands are free both to sustain the load and to move the sieve over the surface and get a uniform lateral powder distribution. The blows are so rapid and regular that the powder, instead of jetting through the sieve in a puff or distinct wave with each hand-struck blow, flows in a practically continuous regular sheet. Arrott's invention enables the enameler to be under a much less strain in the face of terrific heat, it enables him to enamel a very much greater number of articles per hour, and the work can be done by an average man of less physical strength than was required in the former process, and he can be more easily and quickly taught to do the enameling successfully. Arrott's invention is labor and material saving, and effective, and, in relieving to a degree labor under fierce heat and conditions, arose to the plane of the humane.

VIII.

The manufacturers of Sanitary Enameled Iron-Ware recognized the necessity of Arrott's invention to the successful manufacture of Sanitary Enameled Iron-Ware. Many of them used the invention described in the patent, or equivalent means, for enameling the ironware. In all cases the owner of the patent claimed that such manufacturers were infringing the patent and demanded an accounting and damages under threat of suit for infringement. Some of the manufacturers settled with the owner of the Arrott patent by paying a lump sum of money in settlement of the claim for damages and claimed to have abandoned the use of the invention. Others sought to gain time, well knowing that in the end they would have to stand suit for infringement, pay damages, abandon the use of the invention, or take a license under the patent. Others without formally taking a license, made periodical payments to the owner of the patent in order to be allowed to continue the use of the invention. Still others were sued for infringement and judgment obtained against them by the owner of the patent, which judgments were settled by the payment of a sum of money.

IX.

Prior to the defendant Wayman granting the licenses herein referred to, the Arrott patent had been sustained by the Courts in several cases.

X.

For the reasons stated, the art was in a very unsatisfactory condition. No means had been discovered of accomplishing the result produced by the use of the Arrott invention without laying the user

of such means open to a suit for infringement by the owner of the Arrott patent. The manufacturers using the process in use prior to Arrott's invention were unable to successfully complete with those using the Arrott invention, and moreover, produced a disproportionate number of defective, unsightly and substantially unsaleable articles. The consumer was deceived and defrauded and the use of Sanitary Enameled Iron-Ware lessened and its reputation depreciated by defective articles being palmed off on the consumer as not defective.

XI.

That these defendants fully realized the value of the use of the inventions covered by the letters patent referred to and that it would cause numerous economies in material, labor, time consumed, increase output, and avoid the great loss caused by the production of defective articles. These defendants, therefore, procured a license for the use of the said Arrott patents and installed the same in their factory at Elizabeth, New Jersey, and were using the same at and prior to the time of the alleged conspiracy set forth in the petition herein; and that thereafter, when the defendant Wayman became the owner of the said patents, together with other patents referred to in the said petition, and proposed to issue a new license to these defendants upon more favorable terms to these defendants, they readily accepted the proposition as made by Wayman as being greatly to their benefit. These defendants are advised by their counsel, and therefore aver that the said licenses are in all respects lawful, and that in acting in accordance therewith they are not violating the laws of the United States, or of any of the several States, and particularly are not violating the Act of Congress commonly known as the Sherman Anti-Trust Act.

And these defendants deny *that* all and all manner of unlawful combination and confederacy wherewith they are by the said petition charged; without this, there is any other matter, cause or thing in said petition contained material or necessary for these defendants to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of the defendants, all which matters and things the defendants are ready and willing to aver, maintain and prove as this honorable Court shall direct; and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

NOBLE, JACKSON & HUBBARD,
CARROLL T. BOND,
Solicitors.

STATE OF NEW YORK,
County of New York, ss:

Jesse T. Duryea, being duly sworn, deposes and says:

I am the President of the Colwell Lead Company, one of the defendants named in the foregoing answer; I have read the foregoing answer and am familiar with the contents thereof; the same is true of my own knowledge except as to the matters therein stated to be

alleged upon information and belief, and as to those matters I believe it to be true.

JESSE T. DURYEA.

Sworn to before me, this 13th day of January, 1911.

[NOTARY'S SEAL.] FREDERICK J. SHERMAN,
Notary Public, Westchester Co.

Certificate filed in New York County, No. 2113.

STATE OF NEW YORK,
County of New York, ss:

Jesse T. Duryea and Bert O. Tilden being duly severally sworn depose and say, and each for himself deposes and says, that he is one of the defendants named in the foregoing answer; that he has read the foregoing answer and is familiar with the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

JESSE T. DURYEA.
BERT O. TILDEN.

Severally sworn to before me, this 13th day of January, 1911.

[NOTARY'S SEAL.] FREDERICK J. SHERMAN,
Notary Public, Westchester County.

Certificate filed in New York County, No. 2113.

Replication to Answer of Edwin L. Wayman.

Filed October 20, 1910.

In the United States Circuit Court, District of Maryland.

No. —.

UNITED STATES OF AMERICA, Petitioner,
vs.
STANDARD SANITARY MANUFACTURING COMPANY and Others,
Defendants.

Replication to Answer of Defendant Edwin L. Wayman.

For replication to the answer of the defendant Edwin L. Wayman, the United States of America says that the allegations of its petition are true and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

JOHN PHILIP HILL,
United States Attorney for the District of Maryland.
EDWIN P. GROSVENOR,
Special Assistant to the Attorney General.

Replication to Answer of Standard Sanitary Manufacturing Co. and Others.

Filed October 20, 1910.

In the United States Circuit Court, District of Maryland.

No. —.

UNITED STATES OF AMERICA, Petitioner,
vs.
STANDARD SANITARY MANUFACTURING COMPANY and Others,
Defendants.

Replication to Answer of Defendants the Standard Sanitary Manufacturing Company and Others.

For replication to the answer of the defendants

Standard Sanitary Manufacturing Company,
The J. L. Mott Iron Works,
L. Wolff Manufacturing Company,
Theodore Ahrens,
Francis J. Torrance,
E. L. Dawes,
W. A. Myler,
Jordan L. Mott,
Max Goebel,
Ludwig Wolff and
Herman Hoelscher,

the United States of America says that the allegations of its petition are true and that the defendants' answer as set forth is not true, and this the petitioner is ready to prove.

JOHN PHILIP HILL,
United States Attorney for the District of Maryland.
EDWIN P. GROSVENOR,
Special Assistant to the Attorney General.

Replication to Answer of A. Weiskittel — Son Company and Others.

Filed February 20, 1910.

In the United States Circuit Court, District of Maryland.

No. —.

UNITED STATES OF AMERICA, Petitioner,
vs.
STANDARD SANITARY MANUFACTURING COMPANY and Others, Defendants.

Replication to Answer of Defendants A. Weiskittel & Son Company and Others.

For replication to the answer of the defendants,

A. Weiskittel & Son Company,
The Barnes Manufacturing Company,
The Cahill Iron Works,
Colwell Lead Company,
The Day-Ward Company,
The Humphryes Manufacturing Company,
McVay-Walker Company,
The McCrum-Howell Company,
National Sanitary Manufacturing Company,
Kerner Manufacturing Company,
Union Sanitary Manufacturing Company,
United States Sanitary Manufacturing Company,
Wheeling Enameled Iron Company,
Anton Weiskittel,
John D. Heise,
C. H. Voegele,
T. R. Barnes,
F. H. Caldwell,
J. J. Mahoney,
Jesse T. Duryea,
Bert O. Tilden,
W. C. Winfield,
A. G. Ward,
S. N. Ford,
Reid Carpenter,
J. A. Frauenheim,
Thomas Walker,
Alexander C. Walker,
Lloyd G. McCrum,
Howard T. Gates,
Frank G. Borden,
D. W. Davis,
L. C. Huesman,

E. V. Brigham,
Charles Arrott, Jr.,
A. H. Cline, Jr.,
J. E. Wright, and
George W. Franzheim,

the United States of America says that the allegations of its petition are true and that the defendants' answer as set forth is not true and this petitioner is ready to prove.

JOHN PHILIP HILL,
United States Attorney for the District of Maryland.
EDWIN P. GROSVENOR,
Special Assistant to the Attorney General.

Expediting Certificate of the Attorney General.

Filed April 18, 1911.

In the Circuit Court of the United States for the District of Maryland.

Equity.

UNITED STATES OF AMERICA, Petitioner,
v.
STANDARD SANITARY MANUFACTURING COMPANY and Others, Defendants.

To the Clerk of said Court:

I hereby certify that the above entitled cause now pending in said court is a suit in equity brought by the United States against the Standard Sanitary Manufacturing Company and others, under the Act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and that said suit is in my opinion a case of general public importance.

I therefore request that, complying with the provisions of the Act of Congress entitled "An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,'" approved February 11, 1903, you will file this certificate among the records of the above entitled cause, and immediately furnish a copy thereof to each of the Circuit Judges of the Fourth Circuit, to the end that said case shall be given precedence over other cases in said court, and be assigned for hearing at the earliest practicable date before not less than three judges of said circuit, as is provided by the said act of February 11, 1903.

GEO. W. WICKERSHAM,
Attorney General.

Washington, D. C., December 19, 1910.

Order of Court Designating Honorable John C. Rose to Sit with the Circuit Judges on Hearing this Cause.

Filed May 2, 1911.

In the Circuit Court of the United States for the District of Maryland.

Equity.

UNITED STATES OF AMERICA, Petitioner,
vs.
STANDARD SANITARY MANUFACTURING COMPANY and Others, Defendants.

The Attorney General having in pursuance of the Act of Congress of February 11, 1903, (32 Stat., 823), filed his certificate in this cause, setting forth that the same is of general public importance, and requesting that in pursuance of the statute in such case made and provided, that this Court give precedence to this case, and proceed therein hereafter as set forth in the Act of the Congress of the United States alluded to in said certificate.

It is therefore hereby ordered that complying with said request the Honorable John C. Rose, District Judge for the District of Maryland, be and he is hereby designated to sit with the undersigned Circuit Judges on the hearing of this cause, which is, with the consent of counsel, set down for argument at Richmond, Va., on Thursday, May 25, 1911, at eleven o'clock A. M. May 2, 1911.

NATHAN GOFF,
Senior Circuit Judge.
J. C. PRITCHARD,
Circuit Judge.

Motion of Defendants for Enlargement of Time to Take Testimony.

Filed June 15, 1911.

In the United States Circuit Court, District of Maryland.

UNITED STATES OF AMERICA, Petitioner,
against
STANDARD SANITARY MANUFACTURING COMPANY and Others, Defendants.

The defendants move and pray the court to grant the defendants an enlargement of time to complete the taking of their testimony until after the trial and decision in the criminal proceedings now pending in the Eastern District of Michigan, against these same defendants, under the indictments found on or about December 7,

1910, the said indictments being laid upon the same matters, transactions and things as are involved in the issues in this case;

And the defendants further move and pray the court that the hearing of this case be had after the completion of the taking of the defendants' testimony.

It further appearing from the record that notice of this motion was given to the petitioner in due time, and that the said motion and all the rights in connection therewith were reserved at the time of the discontinuance of the taking of the defendants' testimony on or about April 22, 1911, under the orders of the Circuit Court for the District of Maryland.

This motion is made upon the ground, more fully appearing in the record, that the defendants were prevented from completing their testimony by taking the testimony of the several defendants, because the defendants were unwilling to testify voluntarily, lest in so testifying they should furnish information which might be used against them in the criminal proceedings above referred to, and by so testifying they would lose the rights secured to them by the Fifth Amendment to the Constitution of the United States.

Dated June 15, 1911.

NOBLE, JACKSON & HUBBARD,
Of Solicitors for Defendants.

HERBERT NOBLE,
WM. L. MARBURY,
Of Counsel.

Opinion of the Court.

Filed October 13, 1911.

In the Circuit Court of the United States for the District of Maryland.

In Equity.

THE UNITED STATES OF AMERICA, Petitioner,
v.
THE STANDARD SANITARY MANUFACTURING COMPANY et al., Defendants.

Before Goff and Pritchard, Circuit Judges, and Rose, District Judge.

Edwin P. Grosvenor, Special Assistant to the Attorney General, and John Philip Hill, United States attorney (with whom the Attorney General and James A. Fowler, Assistant to the Attorney General, were on the brief), for the United States.

Herbert Noble, William L. Marbury, and Hartwell P. Heath for the Standard Sanitary Manufacturing Co. and other defendants.

Robert B. Honeyman for the Colwell Lead Co.

ROSE, *District Judge:*

The United States brings this suit. It will be called the Government. Its petition is filed under the fourth section of the Sherman

Antitrust Act. It charges that the defendants have violated the first and second sections of that act. It says that they have conspired to restrain interstate trade in sanitary enameled ironware and have attempted to monopolize such trade therein. All the defendants are concerned in making and selling that ware. It is made of cast iron. It is coated with enamel. It has the appearance of being porcelain lined. Bathtubs, lavatories, closet bowls and tanks, sinks and urinals are among the more important articles made of it. It will be referred to as the ware.

There are 50 defendants. Sixteen are corporations. They will be called the corporate defendants. Thirty-four are individuals. They are styled individual defendants. One of them is Edwin L. Wayman. With him each of the corporate defendants made an agreement. These agreements the Government says restrain trade in the ware and attempt to monopolize it. The other 33 individual defendants are officers of the corporate defendants. The Government charges that they each were among the persons who knowingly caused the corporate defendants to do that of which it complains.

These 16 agreements were, with exceptions to be mentioned, identical in their language. At least 15 of the 16 corporate defendants had directly or indirectly taken part in drafting the common form. They were executed by nearly all the corporate defendants on the same day and at the same place. No defendant entered into the agreement without knowing that at least 13 of the other corporate defendants had executed it or intended so to do. Without this knowledge no one of them would have become a party to it.

Each of these agreements is in the form of a license, granted by Wayman, accepted by a corporate defendant. The patents under which the licenses purported to be granted were first put into Wayman's name, two days before most of the agreements were executed. The terms of the agreements had been definitely settled at least two weeks earlier.

There were three patents. They all were for automatic dredgers. A dredger is a tool used in the enameling step of making the ware. The licenses were granted for a period of two years beginning June 1, 1910. Each licensee promised on the fifth day of each month to pay $5 a day for each furnace used by it for the making of the ware during the preceding month. Wayman undertook that he would, three months later, pay back $4 out of every $5. This undertaking was conditioned upon the licensee having in the meantime done all he had agreed to do. There are about 25 working days a month. Wayman, on the 5th of every month, therefore, received $125 for each furnace continuously operated during the preceding month by any one of his licensees. One hundred dollars of this he was eventually to pay back. This repayment was not to be made until three months had gone by. After the first four months he would always have in his hands $300 of his licensees' money for every furnace of theirs in steady use. As it actually turned out, he usually held between $40,000 and $50,000 belonging to them. This money was in the nature of cash bail. Each corporate defendant in this manner

gave security that he would keep his bargain, or be good, as one of the licensees expressed it.

Each corporate defendant promised to do three things:

1. It would not sell any "seconds" or "B's" of any of the ware except bathtubs. It apparently reserved the right to market what the trade calls non-guaranteed bathtubs.

2. It would not sell any ware to any jobber who did not sign the jobbers' resale agreement to be presently described.

3. It would not sell anybody any ware at a lower price or upon more attractive terms than those named in the agreement or in a schedule attached to it. This schedule named standard prices for each article of the ware and for each size, shape, and grade of that article.

All the corporate defendants promised that they would not sell some articles below the schedule price. Some of them undertook not to sell any articles below those prices. Some of the corporate defendants had not the established reputation of others, or they had not as efficient a selling force. They would not take licenses unless they were allowed to sell some articles at a little lower price than those quoted by their stronger rivals.

After much negotiation it was settled by a committee of the corporate defendants that some of them should be allowed to sell some articles at a discount of 2½ in some instances, of 5 per cent in others, from the scheduled prices. The permission to give this discount, granted to some of the corporate defendants and not to others, was the only respect in which there was any difference among any of the agreements as executed. The negotiations as to which of the corporate defendants should be allowed by the others to give these preferential prices to their customers and how great the permitted discount should be was finished before any of the agreements were executed and before any of the patents had been put in Wayman's name.

The resale agreement which the jobber in the ware was required to sign bound him in two respects:

1. He could not buy any ware from anyone other than the corporate defendants.

2. He could not sell ware to anybody at a lower price or on more attractive terms than those named in the resale price lists.

The principles upon which these resale prices were to be worked out in detail had been agreed upon between Wayman and a committee chosen by nearly all of the corporate defendants. This agreement was reached before any licenses were accepted and before any of the patents had become Wayman's. The licenses provided that no changes in the sale or resale prices could be made without the consent of Wayman and the majority of a committee elected by the corporate defendants.

The agreements restricted in a number of ways the freedom of both the corporate defendants who made the ware and the jobbers who sold it to the plumbers. An article of the ware must always be billed separately from other goods sold at the same time to the same person. Many articles could not be shipped uncrated. No allow-

ance could be made for a returned crate, and so on. There were jobbers to whom these rules or some of them were distasteful. Dealers were forced to change the methods of doing business which they had followed for years to the mutual satisfaction of themselves and their customers. These requirements had a purpose. Competition in price can not be altogether shut off unless everybody is made in some respects to do busines in precisely the same way as everybody else.

Each jobber, like each maker, was called on to give cash security that he would carry out his bargain. He had to pay 5 per cent more for the ware than the maker expected to get out of it. If he had not cut prices and had not bought ware from any one other than the corporate defendants at the end of the calendar year he was entitled to receive a rebate of 5 per cent on the amount paid by him during the year. If his purchases from all the corporate defendants combined had amounted to as much as $30,000, his rebate was to be at the rate of 10 per cent.

Applications for rebates were to be made to Wayman. When he approved them they were paid by the corporate defendant or defendants which had sold the applicant the ware. Nearly 400 jobbers signed these agreements. They constituted more than four-fifths of all the jobbers in the country. The consumption of the ware is large. Wayman doubtfully estimated the annual value of the national output of it at $14,000,000. It is hardly less than $10,000,000. It may be much more. Upward of 80 per cent of the jobbers took licenses. They probably handled at least 80 per cent of the product. That is, their total yearly purchases from the corporate defendants must have footed up about $8,000,000. A rebate of 5 per cent on $8,000,000 amounts to $400,000; of 10 per cent to $800,000. Toward the close of every calendar year the corporate defendants would among them hold in the neighborhood of half a million of the jobbers' money.

Moreover, the agreements told the jobbers in plain words that if they cut prices or bought ware from anybody other than the corporate defendants none of the latter would sell them again.

There were jobbers who did not like some of the new rules. Some of them thought their money would be more useful in their own bank account than in that of the corporate defendants. A little less than one-fifth of them refused to sign the agreements.

On the other hand, there was, from the jobbers' standpoint, much that was attractive in the scheme as a whole. Competition had been fierce. It had not always been either wise or honest. A badly made article may look well enough to deceive the average householder. Many such had been put on the market. When the defects were speedily discovered the jobber might have to take back the article. The cost of doing so ate up the profit on a number of like articles which were not returned. There was little profit in handling the ware. If every dealer signed the agreement none of them could gain by taking from the makers and putting off on the public any ware except bathtubs, not standard of its kind. The lowest price the makers could take would buy a good article. No

one would have a "second" if for the same money he could get a standard. Moreover, while nonguaranteed bathtubs could be sold, the price below which they could not be sold was fixed. The jobbers would therefore insist on getting the best of that not very good grade.

With the worst-made articles taken out of the market friction with customers would be lessened. The reputation of the ware would be raised. Every jobber would know that he was buying and selling on the same terms as his competitors. He could tell to the fraction of a cent what his gross profit on every article sold by him would be. He could regulate accordingly his expenditures for handling and advertising it.

If he did not take a license he took large chances. No one of the corporate defendants would sell to him.

Of 250 furnaces in the country, the defendants owned 195, or 78 per cent. In drawing building specifications architects frequently called for ware made by a particular manufacturer. A jobber who could not furnish a plumber with what he wanted for a large job was likely to lose his custom altogether. May, 1910, must have been a trying time for jobbers with a stubborn liking for independence and a taste for managing their own business in their own way.

As already stated, in the end four out of every five of the jobbers signed up. Many of them did so willingly and even enthusiastically. It is probable that the large majority of them welcomed the chance of doing so. Their associations had been urging the manufacturers to put in force a resale arrangement. A number of them have testified that they wanted it. While it lasted, they say, they found it pleasant and profitable. In consequence of these proceedings and of other action taken by the Government, the corporate defendants on January 1, 1911, suspended so much of the agreements as fixed original and resale prices. Many of the jobbers regret the suspension.

With whatever of enthusiasm, with whatever of reluctance, the makers of nearly four-fifths of the ware and more than four out of every five dealers in it became parties to the combination.

The corporate defendants, and many, if not most of the jobbers, were engaged in interstate commerce in the ware. Such commerce was directly restrained by the agreements. The makers who became parties to them could no longer sell the jobbers who did not. The jobbers who did could no longer buy from the makers who did not.

The defendants did their best to get all the makers of importance and all the dealers to become parties to the scheme. If they had succeeded, Wayman and a committee of the corporate defendants would for two years from June 1, 1910, have been able to say that no man anywhere in the United States should buy a bathtub or any other article of the ware at a lower price than it might have suited them to fix. If the trade would then have been monoplized, the defendants attempted to monopolize it.

The important questions in the case are two:

1. Would such a combination as was attempted, and in large part

brought about, have violated the Sherman Act, had patents on automatic dredgers played no part in it?

2. If it would, did the part played by those patents make lawful what otherwise would have been forbidden?

The defendants argue that not every agreement to fix and maintain prices in interstate commerce violates the Sherman Act. They say that eyes illumined by the light of reason will see that what the defendants did was from the standpoint of the public interests good and not evil. They contend that the jobbers were making little profit on the ware. It was troublesome and costly to handle. "Seconds" were on the market. The ware was getting a bad reputation. If the defendants had not done what they did there would soon have been no trade either to restrain or to monopolize.

There is little in the record to support this contention. Such an apprehension is vaguely expressed by some witnesses. If there had been a marked falling off in the sale of the ware, the defendants knew it. They could have shown it by definite and precise figures. They made no attempt to do so. If there was any such danger it was very remote—far too remote to justify the defendants in doing anything which except for it would have been unlawful. That there was any real danger at all is not shown.

According to the defendants, the public gained by what was done, even upon the assumption that if it had been left undone the trade would have continued in undiminished volume.

The ultimate purchaser of the ware seldom knows whether he gets a well-made article. To his eyes it may look well. He may think it will for years be useful, sightly, and sanitary. In a few months he may find that it is wearing badly and has become unsightly. He may have reason to fear that to some slight extent it has become dangerous to the health of himself and his family. He suffers from the greed of the maker, the jobber, or the plumber, or of two or all of them. He will be in no danger from that greed when no one of them can any longer make any money by selling him a bad article for the price of a good. Human nature being what it is, no other effective protection can be given him. If the so-called "seconds" and "B's" are put upon the market at all most of them will in the end be bought by people who do not know what they are buying. It is useless, according to this argument, to call the makers together and ask them to stop selling such goods. Resolutions pledging all the manufacturers to stop making and selling them, it is true, may be easily passed. They will be adopted with enthusiasm or with solemnity according to the mood of the moment, but always with absolute unanimity. Like so many other gentlemen's agreements, they will be straightway broken.

If an enforceable bargain can be made that no goods shall be sold below a certain fixed price which will yield a reasonable profit on a first-class article, jobbers and plumbers can be depended upon not to pay that price for an inferior article.

The defendants say that in no other way can seconds be taken off the market and kept off. They point to what happened after January 1, 1911, when the price-fixing provisions of the agreement were

suspended. The prohibitions against selling "B's" and "seconds" were still in full force. Nevertheless the defendants' witnesses say that the market was at once flooded with low-grade ware. Much of it came from some of the corporate defendants. It may be better for the public to pay a higher price for better ware. Most individuals find that it is usually cheaper in the end. Still two questions remain:

(1) Does the law permit the additional price which the public is to pay to be fixed by a combination of dealers, even if the latter do so because they can not in any other way keep some of their own number from selling bad ware for good?

(2) Has the experience of mankind led them to believe that to permit all the makers and dealers in articles of common use to combine to fix the prices and terms below which those goods may not be sold will tend in the long run to improve the quality of the goods?

The second question is not for the courts. The learned counsel for the defendants say that the first need not be answered in this case. They claim that prices were not raised by the defendants. They assert that the evidence shows that they were in fact lowered. The contention rests on a statement of Wayman. He says that the prices as fixed were intended to be on an average about 5 per cent below those named in the last previously published price list of the defendant, the Standard Sanitary Manufacturing Company. The counsel for the defendants in supposing that Wayman meant that he reduced the then actually prevailing prices have misapprehended the market conditions. They assume that the Standard and the other corporate defendants were in fact getting the prices set forth in their catalogues. The record shows that they were not. Whether they ever had does not appear. They certainly had not during any of the period as to which the record speaks. If in the winter and spring of 1910 those prices had prevailed there would have been no agreements and consequently no case. The agreements as made became fully operative June 4, 1910. No witness says that the published list prices had for many months been generally paid. The evidence is overwhelming that they had not.

On August 4, 1909, Wayman became commissioner or actuary of a newly organized or reorganized Sanitary Enameled Ware Association. All the corporate defendants except the Kerner Manufacturing Company belonged to it. Four other makers of the ware were members of it. These four refused to enter into the price agreements. Consequently they did not take licenses from Wayman. One of his duties as commissioner of the association appears to have been to do what he could by argument and expostulation to prevent price cutting among its members. To this end he wrote many letters. In one of them he speaks of cuts from 2½ to 5 per cent below the published prices as the normal and usual thing. He takes them for granted. They are not cause for complaint. What worries him is the cuts of 20 per cent which he says were then being made. In March, 1910, the terms of the agreements executed two months later were being worked out by corespondence and confer-

ences among the defendants. In that month Commissioner Wayman urged the members of the association to stop quoting what he called the "ridiculous" prices which had recently been made. The Standard Sanitary Manufacturing Company, whose published price lists defendants' counsel suppose show the actual market prices, appears to have had a regularly organized system of rebates.

When the agreements now in controversy went into effect, the Standard notified its customers that their special rebates would be withdrawn. They were told, however, that checks would be sent them for whatever rebates were then due.

The correspondence between the Standard and another of its customers shows that he had been buying at the "supposed" carload limit price less a confidential 7½ per cent discount. Whether the "supposed" carload limit price was the published price or a generally understood discount below it does not appear.

The record contains many letters written by jobbers to some one or the other of the corporate defendants asking that orders alleged to have been sent in before June 4, 1910, should be filled at the old prices. Sometimes their requests were granted. They were grateful. Sometimes they were told that their order had not come to hand before June 4. If filled it must be at the new prices. A long correspondence usually followed. The jobber tried hard to get the ware at the old price.

Many letters passed between one Sullwold and the defendant Ahrens. Ahrens is president of the Standard. Sullwold is head of a Minneapolis jobbing house. He did not like the new scheme. Ahrens tried to get him to come into it. They wrote each other at great length. They go into many details. Whenever one thinks he can make a point on the other he does so. Sullwold repeatedly says that the ware will cost the jobbers more. Ahrens does not deny. Both take it for granted.

Wayman testifies that to stop "ruinous competition" was one of the purposes of the agreements.

The J. M. Kohler Sons Co., of Sheboygan, Wis., was a member of the Sanitary Enameled Ware Association. Wayman and a member of the defendants worked hard to get it to take a license. It would not. It claimed that the scheme was a price agreement pure and simple. It said that price agreements were forbidden by the laws of the United States and of Wisconsin. One Kroos is connected with it. He was a witness for the Government. He presented some elaborate calculations as to the difference between the prices his company had been getting for the ware and the prices it would have received under the Wayman plan. As he figured it, the latter were in every instance greater. The difference ranged from 1 to 45 per cent. Defendant's counsel say that he did not know what he was talking about. According to them he did not understand how the price tables of the defendants were to be applied. He, however, gave the prices of his own company for the various articles principally dealt in by it and the defendants. It would have been easy for the latter to show what the true comparison was, if it had seemed to them

expedient so to do. It is, however, not important to determine whether Kroos did or did not fall into error.

There is in the record a letter to the Standard Sanitary Manufacturing Company from one of its customers. It was written shortly after the price agreements went into effect. In it the writer remarks that, of course, the Standard understood that he could not do much with their prices so long as Kohler continued to sell at the prices it was then making. Quite clearly the new prices were materially higher than Kohler's.

The record shows that the agreements were intended to raise prices and that they did so. How great the increase was is not shown either in percentages or in dollars and cents. To have figured it out would have taken much time and money. Very likely no one knows how much prices were raised. Each defendant knows how much more it took in under the agreements than it had obtained before. No one of them had any accurate knowledge as to the gain made by any one of its 15 corporate co-defendants. Not every one of them would have found it easy to tell what the precise percentage of increase in the price received by it for each kind of article had been. Before the agreements went into effect there was no fixed price. In every large transaction, and in many that were not large, the price actually paid was the outcome of a special and usually of a secret bargain.

Not only did the agreements raise prices—they prevented reductions that would otherwise have been made. The market conditions in the winter and spring of 1910 were such that prices left to themselves would have gone still lower. How rapidly the drop would have run into money is shown by a statement of the president of the Standard. He was trying to get the Kohler Co. to take a license. He pointed out how good a thing the scheme was from the manufacturers' standpoint. He said if it did not go through it would cost the Standard's stockholders $300,000 in 1910, for in that event he would have to reduce prices.

The defendants say that prices may be too low for the public good. Competition may be carried far enough to hurt everybody concerned. It may in the end be the direct cause of monopoly. Under its stress all but the strongest producers may go to the wall. The Government replies that if all the makers of an article of common use combine to raise and maintain prices and to punish any one of their number who reduces them, all the evils which to common experience of mankind result from monopolies will surely follow. Possibly both the defendants and the Government speak truly. It may be that one of the great problems of the day is to find some way of protecting the general public against monopolistic combinations without compel-ing business men to subject themselves and their capital to all the perils of unrestrained competition. To find its solution would appear to be the business of the statesman. The defendants say the courts may give it. In their opinion makers and dealers may combine to raise prices without violating the Sherman Act, provided that the prices fixed by their agreement are not unreasonably high.

In each particular case upon the evidence submitted the courts must say whether the prices asked are or are not reasonable. It would not be an easy task. Some standard of reasonableness would have to be worked out. The factors to be taken into account would be numerous and complex. The labor and expense of finding out what all the relevant facts were would be enormous. After all was done and said the margin of doubt would usually remain large. If the dealers were bound to show affirmatively that their prices were reasonable, the Government would usually win. If the Government had to show that they were unreasonably high, it would ordinarily lose. In this case the defendants assume that the burden of proof as to the unreasonableness of their prices is on the Government. They say, and say truly, that the Government has neither shown nor attempted to show that the schedule prices were unreasonable. The Government replies every agreement to fix prices and to force or bribe makers or dealers to maintain them is illegal. In its view there are no circumstances in this case which take it out of the general rule.

The presumption of the law is that the prices which have been made by the free and untrammeled trafficking of the market place are the reasonable prices. Anyone who interferes with the natural action and interaction of this bargaining assumes the burden of showing that what he did was fair and reasonable. If such a burden rests on the defendants, it has not been sustained. They have not shown what capital they have invested in the business. They have not told what net profit, if any, they earned under the old prices.

These opposing contentions raise questions of great moment and of exceeding difficulty. To answer them wisely may require going to the very roots of our conceptions of what the relation of the State to the industrial life of its people should be. Everyone has the right to discuss them. It may be a duty to do so at all reasonable times and in all proper places. This opinion is not a proper place for such a discussion. Some men believe that price agreements should be sustained by the courts unless they are shown to be against the public interest. Others hold that they may be permitted only when it is affirmatively shown that they promote the public interest. Still others say that a price agreement pure and simple is always illegal. That the Supreme Court has declared the last of the above-stated contentions to be the law is conclusive here. Only a few months ago it said:

"Agreements or combinations between dealers having for their sole purpose the destruction of competition and the fixing of prices are injurious to the public interests and void."

Dr. Miles Medical Co. v. John D. Parks & Sons Co. (220 U. S., 408).

At the moment we are considering only one question. Would the agreements have violated the Sherman Act had the dredger patents had no part in them? They destroyed competition. They fixed prices. For that purpose they were made. They had no other. Defendants say that to fix prices and to destroy competition

would have been to their profit and to the public good. They may not break the law because they think that it will be well to do so. In view of the character of the parties the necessary effect of the agreements was clearly to restrain trade within the purview of the statute. In such case they can not be taken out of the category of the unlawful by general reasoning as to their expediency or non-expediency or the wisdom or want of wisdom of the statute which prohibited their being made. When the nature and character of the contracts create a conclusive presumption bringing them within the statute, such a result is not to be disregarded by the courts by a substitution of a judicial appreciation of what the law ought to be for the plain judicial duty of enforcing the law as it is.

Standard Oil Co. v. United States (221 U. S., at page 65).

It follows from what has been said that unless protected by the terms or the policy of the patent laws the agreements violate the Sherman Act.

II.

Did the part played by the patents make lawful what was otherwise forbidden?

The ware is made of cast iron. After it has been shaped it is enameled. Enameling involves two distinct processes. In each there are several steps. The ware is first given what is called the "slush" coat. This is enamel applied in liquid form. It is burnt on the base by the application of intense heat. The article is placed in a furnace. It is raised to a red heat, say 1,500° F. or upward. It is taken from the furnace. While it still glows powdered enamel is sprinkled upon it. It is put back in the furnace. It is again heated. When it is taken out it usually is again sprinkled with the powder. If so, it is again reheated to fuse the enamel upon its surface. This process may be repeated indefinitely. Ordinarily two coats of the powder suffice. When the last has been burnt on the ware is allowed to cool. It is ready for finishing, inspection, cleaning, shipment, and sale.

The patents spoken of in this case are for automatic dredgers. A dredger is used to sprinkle the powdered enamel on the ware. It serves no other purpose. It is not used in making the iron, or the ware out of the iron, or the liquid, or the powdered enamel, nor in the construction, the heating, or operation of the furnace, nor in taking the weighty and red-hot metal out of the furnace and putting it back. In the doing of these things many compositions of matter, machines, tools, appliances, and processes are employed. Upon the well-doing of every one of them the usefulness, the attractiveness, and the durability of the ware depend. Whether any one of them shall be well or ill, cheaply or expensively done turns in greater or less degree upon the fitness and adaptability of the compositions, machines, tools, appliances, and processes used. Any patentable improvement in any one of them would bear the same relation to the ware as is borne by the automatic dredgers. There might be

differences of degree in either direction. In legal theory no distinction would be possible.

From this point of view further inquiry into the precise degree of usefulness of the automatic dredger in the sprinkling step of the enameling process of making the ware might be omitted.

The question of law will be, in any event, whether the owner of a patent on one of many tools used in the making of a particular kind of unpatented ware may lawfully make such agreements with reference to it as those in the record.

This case is, however, one of importance. In certain aspects it is suggested that it is one of first impression. It will be well, therefore, to understand how the enameler would like to sprinkle the powder and to what extent and in what way the automatic dredger helps him to do it as he would. He wants to use little powder. It is more or less costly. The thinner the enamel coat the better the ware looks and lasts. The whole surface of the article must be covered, otherwise it will be almost or altogether useless. The more uniform the coat of enamel is, the more sightly and durable it will be. If little powder is to fully cover the entire surface it must be applied in a finely divided form. Every portion of the surface must receive as nearly as may be precisely the same amount of powder as any other portion of like extent. The sprinkling must therefore be done with great evenness and regularity. It must be done quickly. The powder will not attach itself firmly to the base unless fused upon it. If every minute portion of the surface is to be covered, the powder must melt and run in liquid form the moment it touches the article. The sprinkling must consequently be done and finished while the iron remains hot enough to liquefy the enamel the instant the latter touches the former. For this purpose a minimum temperature of 1,200° F. is required. It is true that if time does not suffice to sprinkle the powder over the entire surface the article may be returned to the furnace and reheated. When taken out again the uncovered portion may be sprinkled. A coat applied in installments does not usually look well to an expert eye. It is costly. So to put it on takes more time and more fuel.

The manufacturer likes the processes used in his factory to be of a kind easy for the workmen to learn and to practice. Labor then costs less both in money and worry.

When makers of enameled ware first wanted to sprinkle powder on iron they set about doing it in the way in which men had for countless centuries been wont to sprinkle powder for other purposes They took an ordinary sieve, dredge, or sifter. It was not unlike in size and shape that with which housewives had for time out of mind sifted flour or meal. The enameler, it was true, could not handle his sifter as his wife handled hers. He could not stand beside the surface he was to cover and with both hands shake the dredge over it. He could not, because that surface was part of a mass of red-hot iron. He must stand back from it. Accordingly, a handle was put on the dredger. He could not shake it as his wife shook hers. Her only object was to reduce the meal to a fine powder. It

made no difference whether more of it fell upon one portion of her board or pan than on another. He must sprinkle his powder uniformly. He could not force it through the meshes by moving the whole dredger and its contents more or less briskly back and fro. He must move it regularly and in one direction. It was not desirable to let it come back on its own tracks. The enameler shook his sieve by tapping upon the handle with a piece of iron. This tapping occupied one of his hands. He had to support and guide the dredger with the other. He had a disagreeable choice to make. If he used a dredge with a short handle he had to stand very near large articles of glowing iron. If he lengthened the handle the weight of the dredger and its contents at the end of so long a lever became too great for his strength.

What he in fact at first did was to use a dredger with a handle 3 or 4 feet long. This brought him very close to the red-hot metal. To partially protect himself from the heat he wore asbestos masks, gauntlets, and breast plates. Even so, he had an uncomfortable job. The heat was always disagreeable. At times it must have been trying. Supporting the dredger with 6 to 8 pounds of powder in it, and moving it steadily, firmly, and accurately over the surface was hard work. Continuously tapping with the other hand was racking to the muscles and nerves, although the force required to give a single tap was doubtless trifling. Not every man was physically able to handle a dredger under such conditions. Few men could have handled it for more than a few minutes at a time. They did not have to. Bathtubs are the largest articles usually made. Defendants' witnesses say that when the short-handled dredger was used it took on an average about four minutes to cover a bathtub with the powder. The same witnesses tell us that an expert enameler could enamel some 11 tubs in a working day of 10 hours. Each tub ordinarily was given two coats of the powdered enamel. An enameler, therefore, in 10 hours went twice over each of 11 tubs; that is, he sprinkled 22 coats in all. It took him 22 times 4 minutes to do it, or 88 minutes in the aggregate. In the ordinary course of his work he handled the dredger for four minutes. He did something else for 23, then took another 4-minute turn with the dredger, and so on throughout the day. It may be that defendants' witnesses have underestimated the number of tubs formerly enameled by a good workman in a single day. Even so, the enameler used the dredger for short intervals only. There were relatively long intermissions when he did not. If it had been otherwise, the incidents related as to the exhaustion and almost collapse of the workmen would have been common and typical instead of being occasional and altogether exceptional, as they doubtless were. Had they been ordinary occurrences, the industry could scarcely have been carried on.

Whether they were or were not frequent is now immaterial. Before the first automatic dredger was invented it had ceased to be necessary for the enameler to stand close to the glowing metal or to support the weight of the dredger and its contents. It had occurred to some one that the handle might be supported from the ceiling. It could easily be balanced by a counterweight. The length of the

handle was no longer limited by the physical strength of the workman. It was made 7 or 8 feet long. The asbestos armor was discarded except upon the arm and hand most exposed. The enameler had no great weight to support. One arm could be devoted solely to guiding the dredger. The other was still necessarily occupied in keeping up a continuous tapping. This form of dredger had come generally, if not universally, into use before the invention of the pneumatic dredger some 12 or 13 years ago. In essence the patented dredgers differ from the unpatented in one respect only. In the former the tapping is done by machinery. In their predecessors it was done by hand. The handle of the patented dredger is made of hollow metal. In it a plunger is fitted. By compressed air or by electricity the plunger is made to keep up a continuous and perfectly steady and uniform tapping. The workman by the pressure of his thumb may at his will increase or decrease the frequency of these tappings or he may stop them altogether. The automatic dredgers were supported in the same way as the unpatented long-handled dredger had been. The enameler who works with one can use both hands to guide the dredger. He has nothing else to do. His work is much simplified and made far easier and more agreeable. The use of both hands gives him a better and a surer control over the motion of the dredger. There is less danger of his putting too much powder in one place and too little in another. Personally he is much more comfortable. He can work faster. At the same time he no longer feels rushed or driven. He knows now that he can put one coat on before the metal cools. Before he was not always, perhaps not usually, sure that he could. As a rule his work is now better done.

The patented dredger was useful in other ways. It could be fitted with a finer mesh. It puts the powder on the metal in a more finely divided form. This, as has been already pointed out, is an advantage. So long as the tapping was done by hand the blows upon the handle would not always be hard enough to force the powder through a mesh as fine as that which may now be used. The powder falls from an automatically tapped dredge with a regularity and uniformity greater than that which can be given to it by the average workman. The use of the patented dredgers may or may not save enameling powder. There is testimony both ways. With such dredgers more work can be done in the same time. Other things being equal, it is probable that ware in the enameling of which they have been used will on the average be somewhat better enameled than it would have been had hand dredgers been employed.

The record does not enable us to tell in either absolute or relative figures or percentages how great is the saving of time or the bettering of quality. The same number of men in the same time now usually turn out more work than they formerly did. In the attainment of this end the patented dredger helps. Other things contribute. Some, but not all, of these other improvements can be used to greater advantage in connection with the automatic than with the hand dredger. How much the use of the patented dredgers improves the quality is still harder to figure out. Some men with fine

tools can not do as good work as other men with poor. The defendants' evidence seems to show that the percentage of ware of high quality turned out depends much more largely upon shop management and efficiency than it does upon the use of one form of dredger rather than another. One of defendants' witnesses says that with the hand dredge his shop made 95 per cent of second and only 5 per cent of first-class goods. With the automatic dredger he gets 25 per cent of seconds and 75 per cent of firsts. This is definite enough. Another witness for the same side, but whose experience has been had in another factory, says that with the old hand dredge he made only 5 per cent of seconds. By the use of the automatic dredger he has brought that proportion down to 1 per cent. If each of these witnesses is even approximately accurate, it follows that one of them with an automatic dredger made five times as large a proportion of inferior goods as did the other when using a hand dredger.

All that can be safely said is that the automatic dredgers are useful tools. By their use, all other things being equal, ware can be made more cheaply and on the whole of a somewhat better average quality. No one claims that he can tell by inspection of a completed article whether the enameling powder was sprinkled upon it with a hand or an automatic dredger. Some of the witnesses think that if they were shown two considerable lots of the ware in the enameling of one of which one kind of dredger had been exclusively used and in that of the other another kind, they could say upon which the powder had been shaken from a hand dredger and upon which from an automatic dredger. It does not appear that the experiment ever has been tried. It is quite probable, nevertheless, that the distinction could frequently be made with reasonable accuracy, provided that the two lots had both been made in the same shop by the same men and under otherwise like conditions, except as to the dredger used. The difference of results attained in different shops, as shown by the record, and the further fact that as soon as the operation of the price restrictions was suspended some of the defendants, although using the automatic dredger exclusively, put large quantities of seconds on the market, seem to show that it is unlikely that anyone could tell upon which of two lots of the ware made in different shops or in the same shop under different conditions the hand dredger had been used and upon which the automatic.

It follows that there is no respect in which every tub in the enameling of which an automatic dredger has been used differs from every tub in the enameling of which the hand dredger has been employed. Whether the ware shall be well or ill made, whether it shall be durable or the reverse, whether it shall be sightly or unsightly, depends upon many circumstances of which the kind of dredger used to sprinkle the powder is only one and probably not the most important. Much turns on the composition of the enamel. Each factory makes it according to its own formula, which it tries to keep secret. Perhaps none of the powders in use give complete satisfaction. Experiments for their bettering are continually being made. How controlling a part the composition of the powder plays is shown by the account given by one of defendants' witnesses

of the disastrous results upon the ware of an experimental change in the powder made since the first of the present year by one factory. The liquid enamel or slush coat must be properly made and fittingly applied. The furnaces must be adapted to the work to be done by them. The appliances for putting the ware into the furnace and for taking it out again must be constructed so that with little consumption of time and labor the work will be done without damaging the delicate enamel not yet firmly fused upon its base. The castings must be well made and of the right kind of metal. It is quite possible that a new tool, appliance, or process may be invented for the better doing of any one of them. Its use may improve the average quality or cheapen the average cost of the ware, or both. Every such an inventor if he obtained a patent for his invention would be as much entitled as Wayman to say at what price and upon what terms men might deal in the finished article in some stage of the making of which his invention had been used.

Defendants say that while it is true that the automatic dredger is a mere tool, used in only one operation of a number required for the making of the ware, and while it is conceded that merchantable ware can be made without its use, still the advantages of using it are so great that as a commercial proposition the ware can not be made without it. It is unnecessary to consider what legal consequences, if any, would follow if the record sustained this claim. It does not. It is true certain witnesses say that in their judgment the automatic dredgers have become necessities for the manufacture of the ware for commercial purposes. The record conclusively demonstrates that they are mistaken. Such concerns as the J. M. Kohler Sons Co. and the Iron City Sanitary Manufacturing Co. have no rights under any of the patents. There is no evidence of their having infringed them. They make and sell the ware in large quantities in competition with the licensed manufacturers. Moreover, if the experience of the concerns which had the right to use the patented dredger had convinced them that the ware could not without their use be made good enough and cheap enough to be sold in competition with them, it is not conceivable that they should have gone to all the trouble they did to induce those two concerns to take licenses. According to the defendants' present theory the refusal to do so was tantamount to commercial suicide. If factories without licenses could not make ware which could be sold in competition with that made by those who had licenses, the fewer who had licenses the better for those who had.

The ware is absolutely unpatented. Anyone may sell it as freely as he may a loaf of bread. No one can tell by looking at a bathtub whether enameled powder has been sprinkled upon it by a patent dredger any more than anyone who eats a loaf of bread can tell whether it has been baked in an oven with a patented grate, or who lights a kerosene lamp can tell whether, in the process of refining, a patented tool has been used, or by taking a pinch of snuff can be sure that there was or not a patented mill used in grinding the tobacco.

If agreements in this case are not violations of the Sherman Act,

similar agreements among all the bakers of bread, the refiners of petroleum, the grinders of snuff will be legal, provided that somewhere in the process of making the bread, refining the petroleum, or grinding the snuff a patented tool has been used.

The issue is important. It cuts deep. The record squarely presents it. It must be passed upon.

The defendants say they have broken no law even if all that has thus far been said herein be true.

They rely upon what they understand to have been decided by the Circuit Court of Appeals of the Seventh Circuit in the case of the Rubber Tire Wheel Co. v. Milwaukee R. W. Co. (154 Fed., 358).

There the court said that no one can use a patented article without the consent of the patentee. He may fix his own conditions. It adds, "Whatever the terms the courts will enforce them, provided only that the licensee is not thereby required to violate some law outside of the patent laws, like the doing of murder or arson.'

The defendants ask, "Is not the legal title to the dredger patents in Wayman?" "May any use the automatic dredgers without his consent?" "May he not make what terms he will for his license to use them?" "Will not the courts enforce those terms, provided they do not call for the violation of some law outside the patent law, like murder or arson?" "Have the defendants committed murder or arson, or anything like either?"

Making a price agreement differs widely in many fundamental respects from either murder or arson. The difference is so profound that it can be easier felt than accurately defined. It is not to be found in the circumstance that almost all races of men have for countless centuries felt that murder and arson were highly immoral acts. It would not be difficult from the text of the criminal codes of many different peoples at widely separated periods of the world's history and from the writings and sayings of ethical and religious teachers of divers creeds and races to argue that for some thousands of years the vast majority of mankind has felt that it was also immoral to make a combination for the purpose of raising the prices of things of general use. At all times there has been a minority of shrewd and able men who have believed that such combinations were merely the reasonable exercise of superior sagacity and foresight. There never has been a time when most men, however much they disliked price agreements in things they bought but did not sell, were not able to persuade themselves that there was nothing wrong in agreeing to keep up the prices of things they sold but did not buy. It is not for us to say what the true ethical relation of the monopolist to the community in which he lives is. In this country those who believe that he is a dangerous wrongdoer, have in lawful manner written their convictions upon the statute book. The Sherman Act forbids restraint of interstate trade and attempts to monopolize it. He who does either may be punished, and that, too, in a way which the legislature seldom directs unless the thing forbidden is felt by the majority of the people to be unethical if not highly immoral.

The use by the Circuit Court of Appeals of the Seventh Circuit of murder and arson as illustrations of breaches of law which a patentee had no greater immunity to commit than had any other man was accurate, natural, and striking. At a glance everyone could see that a patentee could not lawfully require his licensee to commit either. Unfortunately some people have persuaded themselves that those illustrations were intended as limiting the violations of law which a patentee could not require, to crimes which the ordinary man feels to be of the same general type as murder and arson. Such, of course, was not the intention of the court.

A patentee may not require his licensee to sell a patented oil which flashes below the minimum temperature prescribed by State law.

Patterson v. Kentucky (97 U. S., 501).

He may not authorize his licensee to prescribe and sell his patented medicine in a State which requires of all who write prescriptions that they shall have qualifications not possessed by the licensee.

Jordan v. Overseers of Dayton (4 Ohio, 295).

Selling oil with a low-flashing point or prescribing patent medicine without having a State license to practice medicine would no more strike the average man as akin to murder or arson than would a combination to fix prices. In one respect they are like murder and arson. They are violations of law outside the patent laws. So is a combination in restraint of trade. What the court meant was what the court said—a patentee can not require his licensee to violate a law outside of the patent law. Murder and arson are outside the patent law. Every obligation which a patentee attempts to impose upon his licensee to break any law outside of the patent law is in that respect like a requirement to commit murder or arson.

In the nature of things such must be the law. A patentee is as much subject to the laws of the land as is any other man. From one special application of one class of laws he is exempt. At common law and by statute monopolies are unlawful. At common law and by statute a man who invented a new and useful thing might be given a right which would enable him for a limited time effectually to monopolize it. The courts have said that this right to monopolize what he invented can not be taken from a patentee by State laws. They say it has not been taken away by Congress. All men know that Congress never intended, when it passed the Sherman Act, to change the patent law. It did not do so. The patentee may, in spite of that law, monopolize for the term of his patent the thing which he or his assignor invented. Neither at common law nor in this country by statute has he ever had a right to monopolize anything else. As to everything not validly claimed in his patent he is as other men. If by the common law or the statutes of the State or by the enactments of Congress men are forbidden to restrain trade or to monopolize it, a patentee may not restrain trade or attempt to monopolize it in anything except that which is covered by his patent.

A patent is a grant of a right to exclude all others from making, using, or selling the invention covered by it. It does not give a right to the patentee to sell indulgences to violate the law of the land, be it the Sherman Act or another.

The right to exclude others is the property of the patentee. It is his very own. He may do with it as he will. A very rich man may have $100,000,000 of cash. It is his property. It is his very own. He may do with it as he will. Neither one of them can use his property to bring about a violation of law. A patentee who monopolizes his invention breaks no law. He who uses his property right to exclude others from the making, selling, or using his invention for the purpose and with the effect of making a combination to restrain trade in something from which his patent gives him no right to exclude others, does break the law. He breaks it precisely as the individual defendants in the Standard Oil and American Tobacco Cos. broke it. They had the same right to use their brains, their capital, and their credit as they thought best, as he had to use his right to exclude all others from making, using, or selling automatic dredgers. He was subject to the same limitations as they were. They could not lawfully use their brains, their money, and their credit to restrain trade in petroleum and tobacco. He can not use his patent rights to restrain trade in unpatented bathtubs.

The defendants have pressed upon our attention many cases in the Circuit Courts and in the Circuit Courts of Appeal. Many of them have upheld the right of a patentee to fix the price below which a purchaser from him of patented articles may not sell those articles. In some of these cases it has been held that one who sells at a lower price thereby becomes an infringer and that the Federal courts have jurisdiction of a suit brought against him on account of such sale, irrespective of the amount in controversy or the citizenship of the parties.

Edison Phonograph Co. v. Kaufman (105 Fed., 960).
Edison Phonograph Co. v. Pike (116 Fed., 863).
Victor Talking Machine Co. v. The Fair (123 Fed., 424).
National Phonograph Co. v. Schlegel (128 Fed., 733).
New Jersey Patent Co. v. Schaefer (144 Fed., 437; 159 Fed., 171).
Rubber Tire Wheel Co. v. Milwaukee R. W. Co. (154 Fed., 358).
Goshen Rubber Works v. Single Tube A. & B. Tire Co. (166 Fed., 431).

The Supreme Court has in several recent cases expressly said that it was not to be understood as expressing any opinion as to whether such restrictions when applied to patented articles were or were not valid.

Dr. Miles Medical Co. v. John D. Park & Sons Co. (220 U. S., 373).
Bobbs-Merrill Co. v. Straus (210 U. S., 339).

Wayman did not sell patented dredgers on condition that the purchasers should not resell them below a fixed price. The question

of whether such restrictions upon the sale of patented articles are valid is not before us. We neither decide it nor intimate any opinion upon it.

In a number of cases the owner of a machine patent has licensed others to use the machine on condition that they would buy certain unpatented things upon which the machine operated exclusively from the patentee. Those conditions have been held valid by a number of courts. Persons who with knowledge of the terms of the license have sold to the licensee some of the unpatented things to be used on the patented machine have been held liable for contributory infringement.

Heaton Peninsular Button Fastening Co. v. Eureka Specialty Co. (77 Fed., 288).
Rupp, Wittgenfeld Co. v. Elliott (131 Fed., 730).
A. B. Dick Co. v. Henry (149 Fed., 424).
Aeolian Co. v. Harry H. Juelg Co. (155 Fed., 119).
Crown Cork & Seal Co. v. Brooklyn Bottle Stopper Co. (172 Fed., 225).
Crown Cork & Seal Co. v. Standard Brewery (174 Fed., 252).

In the case of Cortelyou v. Johnson (145 Fed., 933) the majority of the Circuit Court of Appeals for the Second Circuit declined to hold that a third person who, with knowledge of the restriction, sold to a licensee ordinary articles of commerce to be used upon the licensed machine was a contributory infringer. All the judges held that in the particular case there was not sufficient evidence that the defendant made the sales with knowledge as to the terms of the license and the use to be made of the ink. The Supreme Court affirmed the decision below on the ground of want of sufficient evidence of notice. It expressly refused to express any opinion as to whether the defendant could have been held had notice been shown.

Cortelyou v. Johnson (207 U. S., 196).

A patentee may or may not be entitled to obtain his pay for his patented machine in whole or in part by stipulating that he shall have the sole right to furnish material to be used with it. We express no opinion upon the question. It would have been presented in this case had Wayman bargained with the corporate defendants that they should buy all their enameling powder from him. Such a bargain would have been a very different one from that now before us. The purposes aimed at by such a bargain, the relations among the defendants and between them and the public would have all been unlike those shown in the record.

What has been said is sufficient for the determination of this case. The ware is not patented. The agreements or licenses attempt to fix the price of unpatented ware and to monopolize the trade in it. The fact that Wayman had a patent on something else, even though it was a tool used in one step of the making of the ware, gives neither him nor his licensees the right to restrain interstate trade in the ware. The ownership of a patent for a tool by which old, well-known, and unpatented articles of general use can be more cheaply made gives no right to combine the makers and dealers in

the unpatented articles in an agreement to make the public pay more for it.

The first and second sections of the Sherman Act, "when taken together, embraced every conceivable act which could possibly come within the spirit or purpose of the prohibitions of the law without regard to the garb in which such acts were clothed. * * * In view of the general language of the statute and of the public policy which it manifested, there was no possibility of frustrating that policy by resorting to any disguise or subterfuge of form, since resort to reason rendered it impossible to escape by any indirection the prohibitions of the statute."

United States v. American Tobacco Co. (221 U. S., 181).

In what has been said it has been assumed that Wayman was the real and substantial owner of the patents; that the scheme was his; that his purpose was merely to make money for himself by selling to the corporate defendants indulgences to sin against the Sherman Act.

The Government contends that this was not the real situation. In its view there is nothing before the court except an ordinary combination to raise and maintain wholesale and retail prices and to force all the makers and dealers in the country into it. Wayman, it says, was nothing more than the ordinary promoter. The patents served the purpose of the certificate of incorporation from New Jersey or Delaware used when the combination became a consolidation. We have not discussed this branch of the case. We will not. We refrain from doing so not because it would not be pertinent. It would. Ordinarily it would receive full consideration. Unusual circumstances shown by the record make it inexpedient and even improper to do so if the case can be disposed of without commenting upon that aspect of it.

Some months after these proceedings were begun the grand jury of the United States for the Eastern District of Michigan returned indictments against many of the defendants. They were charged with violating the Sherman law. The acts alleged against them there are the same which are made the ground of the equitable relief here asked for.

The defendants have moved that further proceeding herein be put off until the criminal case has been finally disposed of and that the taking of testimony be then reopened. It is said that the individual defendants should in justice to themselves testify fully and freely. It is said that this they dare not now do. They fear that something to which they swear in the civil proceeding may be used in the criminal to their hurt. This motion we can not grant. The Sherman Act provides for both civil and criminal proceedings. The Attorney General must decide whether and when either or both shall be brought. To postpone finding an indictment until after a petition for an injunction had upon final hearing been granted or dismissed would be frequently, if not usually, to wait until after the period of limitations had expired. To refuse to decide the equity cause so long as the criminal charge had not been finally disposed of might leave the public to suffer for years from what the Attorney

General believed to be a harmful interference with its rights and interests. The courts can not, unless in exceptional cases, say that either must wait upon the other. A court of equity has a wide discretion. There may be circumstances which would justify its refusal finally to act until after the indictments had been tried. In our view such circumstances are not found here.

The fact that many of the defendants are now under indictment makes it our duty to be careful not to say anything which might be used either to their prejudice or to that of the Government in the impending criminal trial.

Some minor questions affecting particular defendants are to be passed upon.

The Colwell Lead Co. says it is not engaged in interstate commerce. In our view it is. It makes its ware in New Jersey. It sends it to warerooms in New York City and in Worcester, Mass., and there sells it. Its trade extends over several States. It alleges that it had no part in any of the negotiations leading up to the formation of the scheme; that it did not execute a license agreement until some three weeks after the other corporate defendants, and that then it refused to bind itself to charge the resale prices. It was consulted through its president sometime before any of the agreements were actually entered into or before their precise terms were definitely settled. He then gave a general approval of the plan. Neither he nor it appear to have done anything further until after the others had signed up.

Some months before, the Standard Sanitary Manufacturing Company, which, until May 4, 1910, owned the basic automatic patent, had given the Colwell Co. a revocable license to use the dredger. The latter wanted Wayman to renew the license. It apparently did not want it badly enough to be willing to bind itself to charge the uniform resale prices to the New York City plumbers, to whom it sold a large part of the ware. Wayman finally agreed in writing that if it would take a license he would try to get from the commission of the corporate defendants leave to cut those prices whenever it found that maintaining them would seriously handicap it. If the commission would not let the Colwell Lead Co. do so, the latter on 10 days' notice could terminate the agreement. It would appear that it became a party to the combination to an extent sufficient to entitle the Government to injunctive relief against it.

The evidence shows that two of the individual defendants, namely, Bert O. Tilden and George W. Franzheim, secretaries of the Colwell Lead and the Wheeling Enameled Iron Cos., respectively, had no part in forming the combination. They did not do anything in connection with it except to attest in their official characters papers executed by their corporations. As to them the petition should be dismissed. Against the other defendants, corporate and individual, the Government is entitled to injunctive relief substantially as prayed for. In view of the pendency of the criminal case all characterization of what the defendants have done not necessary to the effectiveness of the decree should be omitted from it. The Government may submit a draft of a decree to the counsel for the defendants. If an agree-

ment can not be speedily had we will upon application fix an early day for its settlement.

GOFF, *Circuit Judge*, dissenting:

I can not assent to the conclusion reached by the court in this opinion. The facts established by the testimony, considered in the light of the law applicable thereto, compel me to conclude that the allegations of the petition have not been sustained.

Decree.

Filed November 27, 1911.

In the Circuit Court of the United States for the District of Maryland. In Equity.

THE UNITED STATES OF AMERICA, Petitioner,

v.

STANDARD SANITARY MANUFACTURING COMPANY, A. WEISKITTEL & Company, The Barnes Manufacturing Company, The Cahill Iron Works, Colwell Lead Company, The Day-Ward Company, The Humphreys Manufacturing Company, Kerner Manufacturing Company, The J. L. Mott Iron Works, McVay & Walker, The McCrum-Howell Company, The National Sanitary Manufacturing Company, Union Sanitary Manufacturing Company, United States Sanitary Manufacturing Company, L. Wolff Manufacturing Company, Wheeling Enameled Iron Company, Theodore Ahrens, Francis J. Torrance, E. L. Dawes, W. A. Myler, Anton Weiskittel, John D. Heise, C. H. Voegele, T. R. Barnes, F. H. Caldwell, J. J. Mahoney, Jesse T. Durvea, Bert O. Tilden, W. C. Winfield, A. G. Ward, S. N. Ford, Reid Carpenter, J. A. Frauenheim, Jordan L. Mott, Max Goebel, Thomas Walker, Alexander C. Walker, Lloyd G. McCrum, Howard T. Gates, Frank G. Borden, D. W. Davis, L. C. Hue-man, E. V. Brigham, Charles Arrott, A. H. Cline, Jr., Herman Hoelscher, J. E. Wright, George W. Franzheim, Edwin L. Wayman, Defendants.

Before Goff and Pritchard, Circuit Judges, and Rose, District Judge.

Decree.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is by the court, Judges Pritchard and Rose concurring, and Judge Goff dissenting, ordered, adjudged, and decreed:—

First. That each of the defendants, Bert O. Tilden and George W. Franzheim, in his official character as secretary of his respective corporation, defendant herein, attested the contracts hereinafter mentioned, executed by such respective corporation, and had no other connection therewith, and that the original petition of the United States herein be and hereby is dismissed as to the defendants, Bert O. Tilden and George W. Franzheim, with costs to each of them to be taxed.

Second. That the defendants (other than those against whom the petition is dismissed, and Ludwig Wolff, who died before the final

hearing), in the manner set forth in the petition, have entered into and are engaging in a combination in restraint of trade and commerce among the several States in sanitary enameled ironware and have attempted and are attempting to monopolize said trade and commerce in said ware, in violation of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies."

Third. That upon the evidence the defendant Colwell Lead Company is engaged in inter-state commerce within the meaning of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies."

Fourth. That the so-called manufacturers' license agreements and the jobbers' license agreements, and the price lists made part of said agreements, all described in the petition herein, have been and are the means adopted and used by the defendants in order to carry into effect the objects and purposes of said unlawful combination in restraint of said interstate trade and commerce in violation of said act of Congress, and that the said agreements and price lists are therefore hereby declared illegal and the defendants and all and each of them and their officers, agents, servants, and employees are enjoined and prohibited from doing anything in furtherance of said manufacturers' license agreements and jobbers' license agreements, and from enforcing in any manner said agreements or any of the terms thereof, and from adopting or enforcing said price lists in interstate commerce in sanitary enameled ironware.

Fifth. That the defendants, their officers, agents, servants, and employees, are enjoined and prohibited from continuing their attempt to monopolize inter-state commerce in said ware by means of the unlawful combination hereinbefore described, and more particularly by means of said manufacturers' license agreements and jobbers' license agreements, and said price lists, or by any other means similar thereto.

Sixth. That the said defendants, their officers, directors, agents, servants, and employees, are enjoined and prohibited from resuming, engaging in, continuing, or carrying into further effect the combination adjudged illegal hereby, and from engaging in or entering into any like combination or attempt to monopolize, the effect of which will be to restrain commerce in sanitary enameled ironware among the several States of the United States, or in the Territories of the United States, by making any express or implied agreement or arrangement together, or one with another, like that adjudged illegal herein, relative to the control or management of the business of the said defendants in sanitary enameled ironware, the effect of which will be to prevent each and any of them from carrying on interstate trade and commerce in sanitary enameled ironware in competition with the others.

Seventh. That this decree shall not be construed to prevent whoever may be the owner or owners of the Arrott patent and other dredger patents relating to the manufacture of sanitary enameled ironware, from granting lawful licenses to any of the defendants or others to use such patents, or to prevent the defendants or others from taking lawful licenses to use any of such patents.

Eighth. It appearing to the court that on the twentieth day of January, 1911, the defendants, Cahill Iron Works, Frank H. Caldwell and John J. Mahoney, by leave of the court, filed their substituted and amended answer in the cause, showing that theretofore, to wit, on the 17th day of December, 1910, they withdrew from said combination and ceased thereafter to engage in any of the practices complained of in the petition, and submitting to a decree such as is herein decreed, it is further adjudged and decreed that the petitioner recover of said defendants one-sixteenth of its lawful costs which accrued in the cause up to the closing of the case of the petitioner on December 22nd, 1910, and that the petitioner recover of the other defendants, except said Bert A. Tilden and George W. Franzheim, and Ludwig Wolff, the remainder of its lawful costs in this cause.

Nov. 25th, 1911.

J. C. PRITCHARD,
U. S. Circuit Judge.
JOHN C. ROSE.
District Judge.

Petition of Defendants for Appeal and Order of Court Thereon Allowing Appeal.

Filed January 18, 1912.

In the District Court of the United States for the District of Maryland.

In Equity. No. 17.

UNITED STATES OF AMERICA, Petitioner,
against
STANDARD SANITARY MANUFACTURING COMPANY, A. WEISKITTEL & Company, The Barnes Manufacturing Company, The Cahill Iron Works, Colwell Lead Company, The Day-Ward Company, The Humphryes Manufacturing Company, Kerner Manufacturing Company, The J. L. Mott Iron Works, McVay & Walker, The McCrum-Howell Company, The National Sanitary Manufacturing Company, Union Sanitary Manufacturing Company, United States Sanitary Manufacturing Company, L. Wolff Manufacturing Company, Wheeling Enameled Iron Company, Theodore Ahrens, Francis J. Torrance, E. L. Dawes, W. A. Myler, Anton Weiskittel, John D. Heise, C. H. Voegele, T. R. Barnes, F. H. Caldwell, J. J. Mahoney, Jesse T. Durvea, Bert O. Tilden, W. C. Winfield, A. G. Ward, S. N. Ford, Reid Carpenter, J. A. Frauenheim, Jordan L. Mott, Max Goebel, Thomas Walker, Alexander C. Walker, Lloyd G. McCrum, Howard T. Gates, Frank G. Borden, D. W. Davis, L. C. Huesman, E. V. Brigham, Charles Arrott, A. H. Cline, Jr., Herman Hoelscher, J. E. Wright, George W. Franzheim, Edwin L. Wayman, Defendants.

Pending in the Circuit Court at the Time Such Court was Abolished.

The above named defendants Standard Sanitary Manufacturing Company, The Barnes Manufacturing Company, Colwell Lead

Company, The Humphryes Manufacturing Company, The J. L. Mott Iron Works, McVay & Walker, The McCrum-Howell Company, National Sanitary Manufacturing Company, Union Sanitary Manufacturing Company, L. Wolff Manufacturing Company, Wheeling Enameled Iron Company, A. Weiskittel & Company, Theodore Ahrens, Francis J. Torrance, E. L. Dawes, W. A. Myler, C. H. Voegele, T. R. Barnes, Jesse T. Duryea, S. N. Ford, Reid Carpenter, Jordan L. Mott, Max Goebel, Thomas Walker, Alexander C. Walker, Lloyd G. McCrum, Howard T. Gates, Frank G. Borden, D. W. Davis, L. C. Huesman, E. V. Brigham, Herman Hoelscher, J. E. Wright, Anton Weiskittel, John D. Heise, and Edwin L. Wayman, conceiving themselves aggrieved by the decree made and entered on the 25th day of November, 1911, in the above entitled cause, do hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the Assignment of Errors, which is filed herewith, and pray that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

J. R. CAREY,
Solicitor for National Sanitary Mfg. Co., Frank G. Borden, & D. W. Davis.
HERBERT B. HONEYMAN,
Solicitor for Colwell Lead Co. & Jesse T. Duryea.
MARBURY, GOSNELL & WILLIAMS &
NOBLE, JACKSON & HUBBARD,
Solicitors for Appellants Other Than Those Named.
LEWIS BRUCKER,
Solicitor for Barnes Manufacturing Co., T. R. Barnes, & C. H. Voegele, Humphreys Manufacturing Co., S. N. Ford, & Reid Carpenter.
RUSSELL T. MACFALL &
FERDINAND WINTER,
Solicitors for Union Sanitary Mfg. Co., L. C. Huesman, & E. V. Brigham.

Dated this 18th day of January, 1912.

Appeal allowed as prayed and bond fixed at $5000 to act as supersedeas as to costs.

Dated, Baltimore, Md., January 18, 1912.

JOHN C. ROSE,
U. S. Judge.

Assignment of Errors.

Filed January 18, 1912.

In the District Court of the United States for the District of Maryland.

In Equity. No. 17.

UNITED STATES OF AMERICA, Petitioner,
against
STANDARD SANITARY MANUFACTURING COMPANY and Others,
Defendants.

Pending in the Circuit Court at the Time Such Court was Abolished.

The defendants Standard Sanitary Manufacturing Company, The Barnes Manufacturing Company, Colwell Lead Company, The Humphryes Manufacturing Company, The J. L. Mott Iron Works, McVay & Walker, The McCrum-Howell Company, National Sanitary Manufacturing Company, Union Sanitary Manufacturing Company, L. Wolff Manufacturing Company, Wheeling Enameled Iron Company, A. Weiskittel & Company, Theodore Ahrens, Francis J. Torrance, E. L. Dawes, W. A. Myler, C. H. Voegele, T. R. Barnes, Jesse T. Duryea, S. N. Ford, Reid Carpenter, Jordan L. Mott, Max Goebel, Thomas Walker, Alexander C. Walker, Lloyd G. McCrum, Howard T. Gates, Frank G. Borden, D. W. Davis, L. C. Huesman, E. V. Brigham, Herman Hoelscher, J. E. Wright, Anton Weiskittel, John D. Heise, and Edwin L. Wayman, pray an appeal from the final decree of the Circuit Court to the Supreme Court of the United States, and make the following assignments of error.

The Court erred:

First. Because, as appears from the record in this cause, the Petitioner was not entitled to the injunction granted in said decree, and its application for the same should have been refused.

Second. Because, as appears from the record in this cause, neither of the defendants named, nor their agents, servants, or attorneys, in the manner set forth in the petition, or otherwise, entered into or engaged in a combination in restraint of trade and commerce among the several States in sanitary enameled iron-ware, or attempted to monopolize said trade and commerce in said ware in violation of the Act of Congress approved July 2, 1890, entitled: "An Act to protect trade and commerce against unlawful restraints and monopolies" or otherwise.

Third. Because, as appears from the record in this cause, the defendant Colwell Lead Company was not engaged in interstate commerce within the meaning of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

Fourth. Because, as appears from the record in this cause, the manufacturers' license agreements and the jobbers' license agreements, and the price lists made part of said agreements, all described

in the petition in this cause, were not means adopted and used by the defendants in order to carry into effect the objects and purposes of any unlawful combination in restraint of said interstate trade and commerce in violation of said Act of Congress, and said agreements and price lists were legal and the Petitioner was not entitled to an injunction enjoining the defendants and all and each of them, and their officers, agents, servants, and employees from doing anything in furtherance of said manufacturers' license agreements and jobbers' license agreements, and from enforcing said agreements or any of the terms thereof, and from adopting and enforcing said price lists in interstate commerce in sanitary enameled iron-ware.

Fifth. Because, as appears from the record in this cause, the Petitioner was not entitled to the injunction granted in said decree enjoining and prohibiting the defendants, their officers, directors, agents, servants, and employees from continuing the combination described in this cause in interstate commerce in said ware, and more particularly in said manufacturers' license agreements and jobbers' license agreements, and said price lists, or by any other means similar thereto.

Sixth. Because, as appears from the record in this cause, the Petitioner was not entitled to the injunction granted in said decree enjoining and prohibiting the defendants, their officers, directors, agents, servants, and employees from resuming, engaging in, continuing, or carrying into further effect the combination described in this cause, and from engaging in, or entering into any like combination, or by making any express or implied agreements or arrangements together, or one with another, like that described in this cause relative to the control or management of the business of said defendants in sanitary enameled iron-ware.

Seventh. In holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were illegal and void.

Eighth. In holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were not legal under the patent laws of the United States.

Ninth. In not holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were legal under the patent laws of the United States.

Tenth. In holding that the defendant Wayman, as owner of the patents described in this cause, could not legally under the patent laws of the United States make with the corporate defendants the manufacturers' license agreements, the jobbers' license agreements, and establish the price lists made a part of said agreements, with regard to sanitary enameled iron-ware made by the use of the inventions covered by said patents.

Eleventh. In not holding that the defendant Wayman induced the several defendants to enter into the manufacturers' license agreements and the jobbers' license agreements, and to adopt the price

lists made a part of said agreements, all described in the petition in this cause, for the purpose of exploiting the inventions covered by the patents mentioned in the petition in this cause, and in order to increase the royalties to be derived by him from the use of said invention.

Twelfth. In holding that the owner of patents could not legally under the patent laws fix the price and prescribe the terms and conditions under which the product of the use of the inventions covered by said Letters Patent could be sold.

Thirteenth. In holding that the owner of patents could not legally under the patent laws fix the price and *describe* the terms and conditions under which the product of the use of the inventions covered by said Letters Patent could be resold.

Fourteenth. In holding that the agreements described in the petition in this cause were illegal and in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

Fifteenth. In holding that the defendants entered into a combination in restraint of trade and commerce among the several States in sanitary enameled iron-ware in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

Sixteenth. In holding that the defendants attempted to monopolize trade and commerce among the several States in sanitary enameled iron-ware in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

Seventeenth. In holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were means adopted and used by the defendants in order to carry into effect the objects and purposes of an unlawful combination in restraint of trade and commerce among the several States in sanitary enameled iron-ware in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

Eighteenth. In holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were means adopted and used by the defendants in order to carry into effect the objects and purposes of an attempt to monopolize trade and commerce among the several States in sanitary enameled iron-ware in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

Nineteenth. In not holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were not subject to the provisions of the Act of Congress, approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

Twentieth. Because the record showed that the defendants acted in good faith in entering into the manufacturers' license agreements, the jobbers' license agreements, and in adopting the price lists made a part of said agreements, all described in the petition in this cause, believing them to be legal under the patent laws of the United States,

Twenty-first. Because the record showed that the manufacturers' license agreements, the jobbers' license agreements and the price lists made a part of said agreements, all described in the petition in this cause, were entered into by the defendants for the purpose of improving the conditions of the business in sanitary enameled iron-ware, and the result was, without increasing the price, to improve the quality of the ware, to prevent unfair competition, and to establish the business upon a better and surer basis, and was not in any respect to coerce or compel those not parties to the agreements to cease dealing in sanitary enameled iron-ware or to prevent competition among dealers in the same.

Twenty-second. In holding that the agreements mentioned in the petition in this cause, and particularly those embodied in the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were price agreements pure and simple, and as such illegal.

Twenty-third. In holding that price agreements pure and simple are always illegal, without regard to whether the prices fixed are reasonable or unreasonable, or whether they tend to restrain interstate trade or commerce, or to stifle competition, or whether they tend to render business more stable and enable manufacturers, jobbers and retailers to conduct business at a reasonable profit upon the reasonable expense of production, handling and sale.

Twenty-fourth. In holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, could not legally be made by the defendant Wayman in so far as such contracts attempted to control and fix the prices and resale prices at which unpatented enameled ware made by the use of the inventions covered by the patents referred to in said petition should be sold, though enameled ware made by the use of such inventions was smoother, evener, thinner, and more durable, the ware of better quality, and the workmen could do more work in the same time, under better conditions, of better quality, and at less cost to the manufacturer.

Twenty-fifth. In holding that the owner of patents could not legally make contracts controlling and fixing the prices and resale prices of the product of the use of the inventions covered by the patents, though the articles made by the use of such inventions were of better quality, could be produced at less cost and under better conditions, and the prices fixed were reasonable.

Twenty-fifth (*a*). Because it appears from the record in this cause that the agreements referred to in the petition were entered into by the defendants primarily for the purpose and with the effect of preventing the manufacture of inferior and defective articles of sanitary

enameled iron ware which on account of their similarity of appearance were often sold as sound articles, thereby eliminating unfair competition in such ware, improving the reputation of the ware, preventing the substitution for the ware of other articles of similar character and for similar purposes, promoting the trade in said ware and enhancing the value of the patent; and any resulting restraint of trade, if any, and any restriction of competition, if any, was merely incidental to said primary purpose and effect and was more than compensated for in the benefit to the public by the stimulation of competition among manufacturers of said ware in the quality of the product, each manufacturer being by virtue thereof relieved of the temptation to manufacture and sell inferior goods because compelled in order to retain his rights under the patents and his share of the trade to turn out the best pos-ibly product at the price fixed, said price so fixed being reasonable.

Twenty-fifth (*b*). Because it appears from the record in this cause that the agreements referred to in the petition were entered into by the defendants primarily for the purpose and with the effect of preventing the manufacture and sale of inferior goods, of compelling the manufacture and sale of first class goods, of enhancing the reputation of sanitary enamelled iron ware and the value of the patents, of preventing the substitution of articles of similar character and used for similar purposes for such ware, of promoting the trade in said ware and for the benefit of the parties to said agreements and the public; and the restraint of trade, if any, and the restriction of competition, if any, were more than compensated for by the benefits derived from the stimulation of competition among the manufacturers of said ware in improving the quality of their product and the incentive given each manufacturer to turn out the best possible product at the price fixed, which price was reasonable.

Twenty-fifth (*c*). Because it appears from the record in this cause that the agreements referred to in the petition were entered into by the defendants primarily for the purpose and with the effect of preventing unfair competition in sanitary enamelled iron ware, of improving the quality of said ware, of enhancing its reputation and the value of the patents and of promoting the trade in such ware by preventing the substitution of other articles therefor; and the restraint of trade, if any, and the restriction of competition, if any, was merely incidental to said primary purpose and effect.

Twenty-sixth. In not holding that the agreements described in the petition in this cause, and particularly the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were reasonable and enabled the manufacturers to improve the quality of sanitary enameled iron-ware, and the prices fixed were reasonable and yielded only a reasonable profit over the reasonable expense of production, handling and sale.

Twenty-seventh. In holding that the motion of the defendants that further proceedings in this cause be postponed until the criminal proceedings pending in the District Court for the Eastern District of Michigan against these same defendants have been finally dis-

posed of and that the taking of testimony be reopened, could not be granted.

Twenty-eighth. In overruling the defendants' application for leave to take further testimony.

Twenty-ninth. In not holding that the petitioner was not entitled to a decree in this cause while pressing the criminal prosecution against the defendants on account of the same transactions on account of which the decree in this cause was asked.

Thirtieth. In holding that this cause was ripe for decree in view of the fact that the petitioner was pressing the criminal prosecution against the defendants for the same transactions on account of which the decree in this cause was asked, and at the same time preventing the defendants from testifying in their own defense in this cause as to material matters by threatening if they did so to use said testimony against them at the trial of said criminal prosecution.

Thirty-first. In not holding that the individual defendants were made parties to this cause merely for the purpose of discovery and should not be included in any injunction order or decree.

Thirty-second. In not dismissing the said petition as to the individual defendants on the ground that they were merely joined for purposes of discovery.

Thirty-third. In not dismissing the said petition so far as the order for injunction was involved as to said individual defendants on the ground that they were merely joined for purposes of discovery.

Thirty-fourth. In not dismissing the said petition on the ground that the facts established by the testimony do not sustain the allegations of the petition.

Thirty-fifth. In awarding costs to the petitioner and against the defendants.

Wherefore, in order that the foregoing Assignments of Error may be and appear of record, defendants present the same to the Court and pray that such disposition be made thereof as is in accordance with law and the statutes of the United States in such cases made and provided, and said defendants, and each of them, pray for a reversal of said decretal order, and that an order be entered dismissing said petition as to each and every of them.

J. R. CAREY,
Solicitor for National Sanitary Mfg. Co., Frank G. Borden, & D. W. Davis.
RUSSELL T. MacFAUL &
FERDINAND WINTER,
Solicitors for Union Sanitary Mfg. Co., L. C. Huesman, & E. V. Brigham.
ROBERT B. HONEYMAN,
Solicitor for Colwell Lead Co., & Jesse T. Duryea.
LEWIS BRUCKER,
Solicitor for Barnes Mfg. Co., T. R. Barnes, & C. H. Vogele, Humphreys Mfg. Co., S. N. Ford, & Reid Carpenter.
MARBURY, GOSNELL & WILLIAMS,
NOBLE, JACKSON & HUBBARD,
Solicitors for Appellants Other Than Those Named.

Appeal Bond.

Filed January 18, 1912.

Know all men by these presents, That the Maryland Casualty Company is held and firmly bound unto the United States of America in the full and just sum of Five Thousand ($5,000.00) dollars, to be paid to the said the United States of America, to which payment, well and truly to be made, it binds itself, its successors and assigns by these presents.

Sealed with its seal and dated this eighteenth day of January, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately at a term of the late Circuit Court of the United States for the District of Maryland in a suit depending in said Court, between the United States of America and the Standard Sanitary Manufacturing Company and others, a decree was rendered Nov. 25th 1911, against the said defendants for an injunction and costs and the said defendants having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said the United States of America citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said defendants shall prosecute said appeal to effect, and answer all damages and costs of the Court below and of the Supreme Court if they fail to make said plea good, then the above obligation to be void; else to remain in full force and virtue; said decree as to the costs to be superseded by this bond.

MARYLAND CASUALTY COMPANY,
By JNO. T. STONE, *President.*

[Corporate Seal M. C. Co.]

Attest:

JAS. F. MITCHELL, *Secretary.*

Approved by—

JOHN C. ROSE,
District Judge.

UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an appeal granted to certain of the defendants from the decree rendered November 25, 1911, in a proceeding in equity in the late U. S. Circuit Court for the District of Maryland, No. 17, wherein the Standard Sanitary Manufacturing

Company and others are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be reversed, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John C. Rose, Judge of the District Court of the United States for the District of Maryland, this 18th day of January, in the year of our Lord one thousand nine hundred and twelve.

JOHN C. ROSE,
District Judge.

[Endorsed:] Service of a copy of the within citation is hereby admitted this 18th day of January 1912. John Philip Hill, U. S. Dist. Att'y, District of Md.

Stipulation of Counsel as to Making up Record on Appeal.

Filed February 14, 1912.

In the District Court of the United States for the District of Maryland.

In Equity. No. 17.

UNITED STATES OF AMERICA, Petitioner,
against
STANDARD SANITARY MANUFACTURING COMPANY, A. WEISKITTEL & Company, The Barnes Manufacturing Company, The Cahill Iron Works, Colwell Lead Company, The Day-Ward Company, The Humphryes Manufacturing Company, Kerner Manufacturing Company, The J. L. Mott Iron Works, McVay & Walker, The McCrum-Howell Company, The National Sanitary Manufacturing Company, Union Sanitary Manufacturing Company, United States Sanitary Manufacturing Company, L. Wolff Manufacturing Company, Wheeling Enameled Iron Company, Theodore Ahrens, Francis J. Torrance, E. L. Dawes, W. A. Myler, Anton Weiskittel, John D. Heise, C. H. Voegele, T. R. Barnes, F. H. Caldwell, J. J. Mahoney, Jesse T. Duryea, Bert O. Tilden, W. C. Winfield, A. G. Ward, S. N. Ford, Reid Carpenter, J. A. Frauenheim, Jordan L. Mott, Max Goebel, Thomas Walker, Alexander C. Walker, Lloyd G. McCrum, Howard T. Gates, Frank G. Borden, D. W. Davis, L. C. Huesman, E. V. Brigham, Charles Arrott, A. H. Cline, Jr., Herman Hoelscher, J. E. Wright, George W. Franzheim, Edwin L. Wayman, Defendants.

Pending in the Circuit Court of the United States at the Time Such Court was Abolished.

It is stipulated and agreed by and between the parties to the above entitled case, that the following be incorporated in and constitute the transcript of record on appeal to the Supreme Court of the United States in said case, viz:

1. Petition for Injunction with exhibits attached.

2. Answer of defendant Edwin L. Wayman.

3. Answer of Standard Sanitary Manufacturing Company and others.

4. Answer of A. Weiskittel & Son Company and others.

5. Replication to answer of Edwin L. Wayman.

6. Replication to answer of Standard Sanitary Manufacturing Company and others.

7. Replication to answer of A. Weiskittel & Son Company and others.

8. Separate answer of Colwell Lead Company, et al.

9. Depositions and exhibits contained in printed volumes 1, 2, 3 and 4, used at the hearing in the Circuit Court.

10. Expediting certificate of the Attorney General.

11. Order designating the Honorable John C. Rose to sit with the Circuit Judges on the hearing of this case.

12. Motion for enlargement of time to take testimony.

13. Opinion of the Court.

14. Decree.

15. Petition for allowance of appeal and Order of Court granting same.

16. Assignment of Errors.

17. Appeal Bond.

18. Citation.

19. Stipulation as to making up Transcript of Record.

20. Order to transmit Record.

21. Clerk's Certificate.

It is further stipulated and agreed that the Clerk of this Court in making up the transcript of record on appeal in said case shall use copies of the portions of complainant's and defendants' printed records, which are included in four printed volumes, which were used at the hearing of said case in said Circuit Court, and which contain the proofs and certain exhibits, instead of transcribing the matter contained in said printed volumes from the original on file in said court, and he may certify the matter contained in said printed record in connection with such other matters and proceedings as may constitute the record in the case, in the same manner as if he had transcribed said printed matter from the original on file as aforesaid, the intention of the parties being that said printed records shall be treated and considered as true copies of the original of the matter they contain.

And it is further stipulated and agreed that the originals of Petitioner's Exhibits 41, 133, 186, and 256, and the several dredgers introduced in evidence by the parties herein, may be used on the argument and referred to in the briefs; but that the said exhibits 41, 133, 186 and 256 shall not be printed in the record.

Baltimore, Md., January 31st, 1912.

EDWIN P. GROSVENOR,
Special Assistant to the Attorney General.
JOHN PHILIP HILL,
United States Attorney.
LEWIS BRUCKER,
Solicitor for Barnes Mfg. Co. et al.
RUSSELL T. MACFALL &
FERDINAND WINTER,
Solicitors for Union Sanitary Mfg. Co. et al.
ROBERT B. HONEYMAN,
Solicitor for Colwell Lead Co. et al.
J. R. CAREY,
Solicitor for National Sanitary Mfg. Co. et al.
MARBURY, GOSNELL & WILLIAMS &
NOBLE, JACKSON & HUBBARD,
Solicitors for Appellants Other Than Those Named.

Order to Transmit Record.

And thereupon, it is ordered by the court here, that a transcript of the record and proceedings of the cause aforesaid, together with all things thereunto relating, be transmitted to the said Supreme Court of the United States, and the same is transmitted accordingly.

Test:

ARTHUR L. SPAMER, *Clerk.*

Clerk's Certificate.

UNITED STATES OF AMERICA,
District of Maryland, To wit:

I, Arthur L. Spamer, Clerk of the District Court of the United States for the District of Maryland, do certify that the matter contained in the aforegoing five volumes, to wit: Volume I, containing testimony of witnesses for the petitioner, paged 1 to 573 inclusive; Volume II, containing Government Exhibits, paged 1 to 360 inclusive; Volume III, containing testimony of witnesses for defendants, paged 1 to 528 inclusive; Volume IV, containing testimony of witnesses for the defendants and defendants' exhibits, paged 1 to 319 inclusive; Volume V, containing the pleadings, Opinion of the Court, Decree of Court and all proceedings subsequent thereto, constitute a true transcript of the record and proceedings in the therein entitled case of United States of America, Petitioner, vs. Standard Sanitary Manufacturing Company, A. Weiskittel & Co., The Barnes

Manufacturing Company, The Cahill Iron Works, Colwell Lead Company, The Day-Ward Company, The Humphreys Manufacturing Company, Kerner Manufacturing Company, The J. L. Mott Iron Works, McVay & Walker, The McCrum-Howell Company, The National Sanitary Manufacturing Company, Union Sanitary Manufacturing Company, United States Sanitary Manufacturing Company, L. Wolff Manufacturing Company, Wheeling Enameled Iron Company, Theodore Ahrens, Francis J. Torrance, E. L. Dawes, W. A. Myler, Anton Weiskittel, John D. Heise, C. H. Voegele, T. R. Barnes, F. H. Caldwell, J. J. Mahoney, Jesse T. Duryea, Bert O. Tilden, W. C. Winfield, A. G. Ward, S. N. Ford, Reid Carpenter, J. A. Frauenheim, Jordan L. Mott, Max Goebel, Thomas Walker, Alexander C. Walker, Lloyd G. McCrum, Howard G. Gates, Frank G. Borden, D. W. Davis, L. C. Huesman, E. V. Brigham, Charles Arrott, A. H. Kline, Jr., Ludwig Wolff, Herman Hoelscher, J. E. Wright, George W. Franzheim and Edwin L. Wayman, Defendants, No. 17 Equity Docket "G," heretofore pending in the Circuit Court of the United States for the District of Maryland prior to its being abolished by Act of Congress, approved March 3rd, 1911, made up in accordance with stipulation of counsel for the respective parties, filed in said case and copied in said transcript.

In testimony whereof, I hereunto set my hand and affix the sead of said District Court, this 15th day of February, 1912.

[Seal United States District Court, Maryland.]

ARTHUR L. SPAMER, *Clerk.*

Endorsed on cover: File No. 23,064. Maryland D. C. U. S. Term No. 988. Standard Sanitary Manufacturing Company et al., appellants, vs. The United States of America. Filed February 16th, 1912. File No. 23,064.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

STANDARD SANITARY MANUFACTURING Company et al., appellants, *v.* THE UNITED STATES OF AMERICA. } No. 988.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

MOTION TO ADVANCE.

Comes now the Solicitor General on behalf of the United States and moves the court to advance the above-entitled cause for hearing.

The appeal is from a final decree of the Circuit Court for the District of Maryland, entered in favor of the petitioner, November 25th, 1911.

This is a suit in equity instituted July 21st, 1910, under the Sherman Antitrust Act. The United States contends that an arrangement entered into by the defendants under so-called license agreements to use a patent constitutes a combination in violation of the

Sherman Act and an attempt to monopolize interstate commerce in sanitary enameled ironware.

Sanitary enameled ironware is unpatented. A patented tool called an Arrott dredger, which is an automatic sifter of powdered enamel, is useful but not essential in the manufacture of the ware. Sixteen defendant companies took license agreements to use this patented dredger, and incorporated in the license agreements conditions governing the prices and terms of sale of the unpatented enameled ware, such as bathtubs, lavatories, and sinks. These conditions controlled the trade of the manufacturers to more than four hundred jobbers, and also the trade of the jobbers with the plumbers, the latter being accomplished by means of so-called jobbers' license agreements. By means of these license agreements the defendants eliminated competition between themselves in making sales to jobbers, and also destroyed competition as to prices and terms of sale in sales by jobbers to plumbers. The manufacturers who joined the arrangement controlled approximately 85 per cent. of the production in the United States. The jobbers who signed the jobbers' agreements controlled more than 90 per cent. of the sales from jobbers to plumbers.

The defendants contend that they lawfully incorporated these restraints in the agreements by reason of the fact that the agreements were license agreements to use a patent.

Briefly stated, this case involves the following questions of law:

First. May the owner of a patent on a tool which is used in the manufacture of an article not patented, by licensing all the manufacturers of that unpatented article to use the patented tool in the process of manufacture, fix the prices and terms under which the unpatented article is sold by the manufacturers to jobbers and wholesalers, and also fix the resale prices and terms of sale by the wholesaler to the retailer?

Second. May all the manufacturers of an article not patented, which they sell throughout the United States in competition with each other, by agreement with each other enter into uniform license agreements with one individual to use in the manufacture of the nonpatented article a patented tool, the patent on which tool has been assigned by one of the manufacturers to that individual, and by means of such uniform license agreements establish uniform and noncompetitive prices and terms of sale of the unpatented article, thereby eliminating all competition between them in respect to the prices and terms of sale of the article which is not patented.

The defendants assert such rights exist by virtue of the patent laws, and have been rightfully exercised by them in this case. The Government contends that the patent laws grant no such privileges; that the patent laws and the Sherman Act are not conflicting, but in their respective domains are mutually exclusive of each other.

In the court below, the Attorney General filed a certificate as provided by the Expediting Act of Feb-

ruary 11, 1903, 32 Stat. 823, as amended June 25, 1910, 36 Stat. 854.

Opposing counsel consent that the case may be advanced.

F. W. LEHMANN,
Solicitor General.

MARCH, 1912.

FILED.
SEP 23 1912
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 554.

STANDARD SANITARY MANUFACTURING CO. ET AL.,
Appellants,

vs.

THE UNITED STATES OF AMERICA.

BRIEF ON BEHALF OF APPELLANTS.

HERBERT NOBLE,
HENRY D. ESTABROOK,
HARTWELL P. HEATH,
Of Counsel.

C. G. Burgoyne, 72 to 76 Spring Street, New York.

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MOTION

Supreme Court of the United States.

STANDARD SANITARY MANUFACTURING CO., ET AL.,
Appellants,

AGAINST

THE UNITED STATES OF AMERICA.

No. 554.
October Term, 1912.

BRIEF ON BEHALF OF APPELLANTS.

Statement of the Case.

This is an appeal (Transcript of Record, v. A., pp. 127, 128) from a decree filed November 27, 1911, in the office of the clerk of the then Circuit Court for the District of Maryland (v. A., pp. 125–127) dismissing the petition as to the defendants, Bert O. Tilden and George W. Franzheim and sustaining the allegations of the petition as to the other defendants except Ludwig Wolff, and enjoining said defendants from further proceeding with certain agreements, after a hearing at Richmond, Virginia, before GOFF and PRITCHARD, Circuit Judges, and ROSE, District Judge, upon a decision of said Court to which GOFF, Circuit Judge, dissented (v. A, pp. 103–125).

This is a proceeding in equity brought in the said Circuit Court under Section 4 of the Act of Congress, approved July 2, 1890, commonly called the Sherman Anti-Trust Act, by the filing of an original petition in the above-named Court on July 22, 1910, by the United States (v. A, pp. 2–42).

There were sixteen corporations and thirty-four individuals named as defendants (v. A., pp. 2, 3).

The petition alleged that the defendants had unlawfully and knowingly engaged and were at the time of the filing of the petition, engaged in a combination and conspiracy in

restraint of interstate and foreign commerce in sanitary enameled iron ware and that the defendants had attempted and were at the time of the filing of the petition attempting to monopolize said commerce by engaging in and continuing to engage in said combination (v. A., pp. 2–13).

The petition did not waive answers under oath and according to the rules of practice of said court and the law, the answers of the defendants were required to be made under oath. The duly verified answers of the defendants were duly filed. These answers denied the allegations of the petition and that the agreements referred to therein were unlawful and set up as an affirmative defense that the agreements complained of were valid under the Patent Laws (v. A, pp. 43–87).

Replications to said answers were duly filed (v. A, pp. 98–101).

Thereafter, by permission of the Court, the defendants Colwell Lead Co., Jesse T. Duryea and Bert O. Tilden filed a joint and several amended and supplemental answer (v. A, pp. 88–98) in which they set up the additional defense that they were not engaged in interstate commerce.

On or about October 31st, 1910, the government began the taking of its testimony and continued so doing until on or about December 22, 1910, when it closed its case.

On or about December 6th, 1910, indictments were found under the said act in the District Court of the United States for the Eastern District of Michigan against the same defendants, with the exception of John D. Heise and Edwin L. Wayman for the alleged violations thereof based upon the same matters, transactions and things, which were alleged in the petition as constituting the combination and conspiracy in restraint of interstate and foreign trade and commerce and the attempt to monopolize said trade and commerce.

On account of the pendency of the criminal proceedings and the necessity for preparing for the defense thereof and because of the unwillingness of the individual defendants to testify in the case lest any testimony that they might give, furnish information which might be used in an endeavor to incriminate them, the defendants secured an extension of time to take their testimony until April 22, 1911.

The defendants began the taking of their testimony on or about February 14, 1911, and continued so doing from time to

time until April 22, 1911, when the time allowed them to take testimony expired.

On account of the unwillingness of the individual defendants to testify in the case in view of the pendency of the criminal proceedings, the defendants were unable prior to the hearing of the case, to present a large portion of the testimony which was material to the proof of their defense and a motion for an enlargement of the defendants' time to take testimony was made at the hearing, pursuant to notice theretofore given (v. A, pp. 102, 103), and in the opinion of the majority of the court, it was said such motion could not be granted (v. A, p. 123) and the court proceeded to render its decree (v. A, p. pp. 125-127).

Specifications of Errors Relied Upon.

Numerous errors are assigned * and relied upon (v. A., pp. 129-134) but they naturally come, and in this brief will be considered, under the four following general heads:

1. That the Court below erred in not decreeing that the agreements entered into by the defendants, and

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* The Court erred:

FIRST. Because, as appears from the record in this cause, the Petitioner was not entitled to the injunction granted in said decree, and its application for the same should have been refused.

SECOND. Because, as appears from the record in this cause, neither of the defendants named, nor their agents, servants, or attorneys, in the manner set forth in the petition, or otherwise, entered into or engaged in a combination in restraint of trade and commerce among the several States in sanitary enameled iron-ware, or attempted to monopolize said trade and commerce in said ware in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" or otherwise.

THIRD. Because, as appears from the record in this cause, the defendant Colwell Lead Company was not engaged in interstate commerce within the meaning of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

FOURTH. Because, as appears from the record in this cause, the manufacturers' license agreements and the jobbers' license agreements, and the price lists made part of said agreements, all described in the petition in this cause, were not means adopted and used by the defendants in order to carry into effect the objects and purposes of any unlawful combination in restraint of said interstate trade and commerce in violation of said Act of Congress, and said agreements and price lists were legal and the Petitioner was

upon which the petition is based, were lawful under the Patent Laws of the United States and not subject to the provisions of the Sherman Anti-Trust Act.

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not entitled to an injunction enjoining the defendants and all and each of them, and their officers, agents, servants, and employees from doing anything in furtherance of said manufacturers' license agreements and jobbers' license agreements, and from enforcing said agreements or any of the terms thereof, and from adopting and enforcing said price lists in interstate commerce in sanitary enameled iron-ware.

FIFTH. Because, as appears from the record in this cause, the Petitioner was not entitled to the injunction granted in said decree enjoining and prohibiting the defendants, their officers, directors, agents, servants, and employees from continuing the combination described in this cause in interstate commerce in said ware, and more particularly in said manufacturers' license agreements and jobbers' license agreements, and said price lists, or by any other means similar thereto.

SIXTH. Because, as appears from the record in this cause, the Petitioner was not entitled to the injunction granted in said decree enjoining and prohibiting the defendants, their officers, directors, agents, servants, and employees from resuming, engaging in, continuing, or carrying into further effect the combination described in this cause, and from engaging in, or entering into any like combination, or by making any express or implied agreements or arrangements together, or one with another, like that described in this cause relative to the control or management of the business of said defendants in sanitary enameled iron-ware.

SEVENTH. In holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were illegal and void.

EIGHTH. In holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were not legal under the patent laws of the United States.

NINTH. In not holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were legal under the patent laws of the United States.

TENTH. In holding that the defendant Wayman, as owner of the patents described in this cause, could not legally under the patent laws of the United States make with the corporate defendants the manufacturers' license agreements, the jobbers' license agreements, and establish the price lists made a part of said agreements, with regard to sanitary enameled iron-ware made by the use of the inventions covered by said patents.

ELEVENTH. In not holding that the defendant Wayman induced the several defendants to enter into the manufacturers' license agreements and the jobbers' license agreements, and to adopt the price lists made a part of said agreements, all described in the petition in this cause, for the purpose of exploiting the inventions covered by the patents mentioned in the petition in this cause, and in order to increase the royalties to be derived by him from the use of said invention.

2. That the Court below erred in not decreeing that the agreements entered into by the defendants, and upon which the petition is based, were not in restraint

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TWELFTH. In holding that the owner of patents could not legally under the patent laws fix the price and prescribe the terms and conditions under which the product of the use of the inventions covered by said Letters Patent could be sold.

THIRTEENTH. In holding that the owner of patents could not legally under the patent laws fix the price and *describe* (*sic.*) the terms and conditions under which the product of the use of the inventions covered by said Letters Patent could be resold.

FOURTEENTH. In holding that the agreements described in the petition in this cause were illegal and in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

FIFTEENTH. In holding that the defendants entered into a combination in restraint of trade and commerce among the several States in sanitary enameled ironware in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

SIXTEENTH. In holding that the defendants attempted to monopolize trade and commerce among the several States in sanitary enameled ironware in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

SEVENTEENTH. In holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were means adopted and used by the defendants in order to carry into effect the objects and purposes of an unlawful combination in restraint of trade and commerce among the several States in sanitary enameled iron-ware in violation of the Act of Congress approved July, 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

EIGHTEENTH. In holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were means adopted and used by the defendants in order to carry into effect the objects and purposes of an attempt to monopolize trade and commerce among the several States in sanitary enameled iron-ware in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

NINETEENTH. In not holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were not subject to the provisions of the Act of Congress, approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

TWENTIETH. Because the record showed that the defendants acted in good faith in entering into the manufacturers' license agreements, the jobbers'

of interstate trade and commerce and not in violation of the Sherman Anti-Trust Act, and that the use of the patents was not a subterfuge.

3. That the Court below erred in not granting the

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license agreements, and in adopting the price lists made a part of said agreements, all described in the petition in this cause, believing them to be legal under the patent laws of the United States.

TWENTY-FIRST. Because the record showed that the manufacturers' license agreements, the jobbers' license agreements and the price lists made a part of said agreements, all described in the petition in this cause, were entered into by the defendants for the purpose of improving the conditions of the business in sanitary enameled iron-ware, and the result was, without increasing the price, to improve the quality of the ware, to prevent unfair competition and to establish the business upon a better and surer basis, and was not in any respect to coerce or compel those not parties to the agreements to cease dealing in sanitary enameled iron-ware or to prevent competition among dealers in the same.

TWENTY-SECOND. In holding that the agreements mentioned in the petition in this cause, and particularly those embodied in the manufacturers' license agreements, the jobbers' license agreements and the price lists made a part of said agreements, all described in the petition in this cause, were price agreements pure and simple, and as such illegal.

TWENTY-THIRD. In holding that price agreements pure and simple are always illegal, without regard to whether the prices fixed are reasonable or unreasonable, or whether they tend to restrain interstate trade or commerce, or to stifle competition, or whether they tend to render business more stable and enable manufacturers, jobbers and retailers to conduct business at a reasonable profit upon the reasonable expense of production, handling and sale.

TWENTY-FOURTH. In holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists, made a part of said agreements, all described in the petition in this cause, could not legally be made by the defendant Wayman in so far as such contracts attempted to control and fix the prices and resale prices at which unpatented enameled ware made by the use of the inventions covered by the patents referred to in said petition should be sold, though enameled ware made by the use of such inventions was smoother, evener, thinner, and more durable, the ware of better quality, and the workmen could do more work in the same time under better conditions, of better quality, and at less cost to the manufacturer.

TWENTY-FIFTH. In holding that the owner of patents could not legally make contracts controlling and fixing the prices and resale prices of the product of the use of the inventions covered by the patents, though the articles made by the use of such inventions were of better quality, could be produced at less cost and under better conditions, and the prices fixed were reasonable.

TWENTY-FIFTH (*a*). Because it appears from the record in this cause that the agreements referred to in the petition were entered into by the defend-

motion of the defendants for an enlargement of time to take testimony and that the hearing of the case be postponed until the taking of the defendants' testimony could be completed.

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ants primarily for the purpose and with the effect of preventing the manufacture of inferior and defective articles of sanitary enameled iron-ware which on account of their similarity of appearance were often sold as sound articles, thereby eliminating unfair competition in such ware, improving the reputation of the ware, preventing the substitution for the ware of other articles of similar character and for similar purposes, promoting the trade in said ware and enhancing the value of the patent; and any resulting restraint of trade, if any, and any restriction of competition, if any, was merely incidental to said primary purpose and effect and was more than compensated for in the benefit to the public by the stimulation of competition among manufacturers of said ware in the quality of the product, each manufacturer being by virtue thereof relieved of the temptation to manufacture and sell inferior goods because compelled in order to retain his rights under the patents and his share of the trade to turn out the best possible product at the price fixed, said price so fixed being reasonable.

TWENTY-FIFTH (*b*). Because it appears from the record in this cause that the agreements referred to in the petition were entered into by the defendants primarily for the purpose and with the effect of preventing the manufacture and sale of inferior goods, of compelling the manufacture and sale of first class goods, of enhancing the reputation of sanitary enameled iron-ware and the value of the patents, of preventing the substitution of articles of similar character and used for similar purposes for such ware, of promoting the trade in said ware and for the benefit of the parties to said agreements and the public; and the restraint of trade, if any, and the restriction of competition, if any, were more than compensated for by the benefits derived from the stimulation of competition among the manufacturers of said ware in improving the quality of their product and the incentive given each manufacturer to turn out the best possible product at the price fixed, which price was reasonable.

TWENTY-FIFTH (*c*). Because it appears from the record in this cause that the agreements referred to in the petition were entered into by the defendants primarily for the purpose and with the effect of preventing unfair competition in sanitary enameled iron-ware, of improving the quality of said ware, of enhancing its reputation and the value of the patents and of promoting the trade in such ware by preventing the substitution of other articles therefor; and the restraint of trade, if any, and the restriction of competition, if any, was merely incidental to said primary purpose and effect.

TWENTY-SIXTH. In not holding that the agreements described in the petition in this cause, and particularly the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were reasonable and enabled the manufacturers to improve the quality of sanitary enameled

4. That the Court below erred in decreeing that the Government had established a case entitling it to an injunction against the defendants.

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iron-ware, and the prices fixed were reasonable and yielded only a reasonable profit over the reasonable expense of production, handling and sale.

TWENTY-SEVENTH. In holding that the motion of the defendants that further proceedings in this cause be postponed until the criminal proceedings pending in the District Court for the Eastern District of Michigan against these same defendants have been finally disposed of and that the taking of testimony be reopened could not be granted.

TWENTY-EIGHTH. In overruling the defendants' application for leave to take further testimony.

TWENTY-NINTH. In not holding that the petitioner was not entitled to a decree in this cause while pressing the criminal prosecution against the defendants on account of the same transactions on account of which the decree in this cause was asked.

THIRTIETH. In holding that this cause was ripe for decree in view of the fact that the petitioner was pressing the criminal prosecution against the defendants for the same transactions on account of which the decree in this cause was asked, and at the same time preventing the defendants from testifying in their own defense in this cause as to material matters by threatening if they did so to use said testimony against them at the trial of said criminal prosecution.

THIRTY-FIRST. In not holding that the individual defendants were made parties to this cause merely for the purpose of discovery and should not be included in any injunction order or decree.

THIRTY-SECOND. In not dismissing the said petition as to the individual defendants on the ground that they were merely joined for purposes of discovery.

THIRTY-THIRD. In not dismissing the said petition so far as the order for injunction was involved as to said individual defendants on the ground that they were merely joined for purposes of discovery.

THIRTY-FOURTH. In not dismissing the said petition on the ground that the facts established by the testimony do not sustain the allegations of the petition.

THIRTY-FIFTH. In awarding costs to the petitioner and against the defendants.

Wherefore, in order that the foregoing Assignments of Error may be and appear of record, defendants present the same to the Court and pray that such disposition be made thereof as is in accordance with law and the statutes of the United States in such cases made and provided, and said defendants, and each of them, pray for a reversal of said decretal order, and that an order be entered dismissing said petition as to each and every of them.

BRIEF OF THE ARGUMENT.

The gravamen of the Government's involved charge is, that while a Mr. Wayman, whose career is hereinafter considered, may have concocted and organized a scheme for his own aggrandizement, his co-defendants were easy converts and worked with him for its consummation, so that it amounted to a wicked conspiracy to circumvent the Sherman Act by basing the scheme on a patented invention of little or no importance and used only as a subterfuge to justify, under patent law, acts that otherwise would be illegal, and that the defendants should not be suffered to thus do by indirection what they are prohibited from doing directly. Let us disentangle this yarn of accusation and see what it all amounts to.

In the first place, whether it is wicked to attempt to circumvent the Sherman Act depends somewhat upon the meaning of the Sherman Act as well as the meaning of the word "circumvent." Translated literally, according to its rhyme and not its reason, the Sherman Act is a blight upon enterprise. The venom of anarchy could not elaborate a more enervating, paralyzing proscription. All business would be under the ban of the law; with the result that it would be left to the caprice or favor of the Attorney-General to give immunity to favorites or punish enemies. If the Sherman Act means this, then we make bold to say that it is the righteous duty of every lawyer to circumvent the Sherman Act if it can be accomplished.

But what is the meaning of this word "circumvent"? If a man side-steps a blow aimed at him by any one, is he not obeying a natural impulse? If a man's remedy for a wrong is barred at law, does he circumvent the law if he resorts to equity? If certain acts dictated by self-interest are illegal unless done under the sanction of patent law, is it reprehensible to legalize such acts by doing them under patent law?

We will shortly demonstrate that the scheme complained of from beginning to end was that of Mr. Wayman, whose only motive was to make money for himself, not as a manufacturer but as the owner of a patent, receiving royalties from those whom he licensed to use his patented invention. The motives

of the other defendants as manufacturers may have been as various as their various interests; but if what was done was legal, the question of motive on the part of anybody is clearly immaterial.

(Diamond Match Co. vs. Roeber, 106 N. Y., 473; McCune vs. Norwich City Gas Co., 30 Conn., 521; Glendon Iron Works vs. Uhler, 15 Amer. R., 599; Harvard Law Review, Vol. XX., Nos. 4, 5 and 6).

So, too, the question whether Mr. Wayman bought the patent with his own money or borrowed the money to pay for it, or whether it was given to him outright, becomes equally immaterial; for there is no question but that the Standard Company was the owner of the Arrott patent and could dispose of it as it pleased. Nor is there any question as to the paramount value and importance of the Arrott invention in the manufacture of enameled iron ware. Nor is there any question but that the Standard Company had over 50% of the licensed furnaces using this invention (Petitioner's Exhibit No. 132, pp. 188, 189), and turned out fifty per cent. of the enameled iron ware manufactured in the United States, all of first class quality.

(*Infra*, pp. 32-51, *John D. Park & Sons Co. vs. Hartman*, 153 F., 24; *United States vs. Joint Traffic Association, infra*).

The evidence shows that the standard's goods came in competition with goods of cheaper grade and defective workmanship, called "seconds," which were nevertheless sold to the ultimate purchaser as perfect ware. The evidence shows that the Standard Company had tried to prevail upon its competitors to use the Arrott invention on a royalty basis, which offer had been rejected principally because it would give the Standard Company a right of access to the books of its rivals and competitors.

Presuming now that the Standard Company had invited all of its competitors throughout the country to a conference in Chicago, Mt. Clemens or New York, and had said to them in substance: "Gentlemen, as you know, this Company turns out fifty per cent. of the enameled iron ware used in the United States. Our product is first-class in every particular. We make no "seconds," or if by accident or neglect we do turn out

an occasional defective article, we promptly destroy it. We are enabled to do this perfect work by means of the so-called Arrott invention. Most of you know the merits of this invention and how necessary it is in the making of first-class enameled iron ware. You also know that not one of your factories turns out uniformly first-class work. The perfect article is the exception and not the rule with all of you. But it is a fact that our Company is obliged to compete in the open market with your wares, for the reason that the difference in quality is discernible only by experts. When use demonstrates the worthlessness of your output all enameled iron ware is discredited. To speak plainly, you defraud the public, you discredit the ware and demoralize the market and the business. Now we are willing to license every one of you to use the Arrott invention for making your wares if you will become licensees on our terms. We want you first and foremost to agree that no "seconds" shall be marketed. We want you in the second place to agree on a standard price, so that henceforth our rivalry shall be in the quality of the ware turned out at a uniform price, or in any other collateral inducement to the purchaser that does not affect the quality of the ware. We do not wish access to your books, nor have we any curiosity as to the details of your business; and in order that none of you shall be in a subordinate relationship to us we will put the legal title of the Arrott patent in Mr. Wayman. To compensate him for his services in acting as commissioner, umpire, referee, or whatever you please to call it, to compensate him for watching us and insuring our *bona fide* observance of the terms and conditions agreed upon, we will each of us pay him a royalty for the use of the Arrott invention. We believe that it is to your interest to accept this proposition, and, all things considered, we have concluded it is to our interest to make this proposition."

If Your Honors please, this is all there is in substance or principle to the case at bar, except that Mr. Wayman, instead of the Standard Company, was the originator of the scheme and that he persuaded his co-defendants to enter into it. But if the Standard Company by the method suggested could properly and legally have licensed its co-defendants on the terms complained of by the Government, then certainly the acts of

the defendants were not illegal merely because the suggestion originated with Mr. Wayman.

We likewise strenuously contend that irrespective of patent law or patent rights the acts of the defendants did not in any reasonable sense create a monopoly, nor restrain commerce, nor limit output, nor throttle competition ; and so were not obnoxious to any fair reading of the Sherman Act. We are quite positive of this if the real interest of the public is the criterion of the interpretation of that law. We respectfully protest that the rule of possible evil—that the mere power to do evil is equivalent to the actual doing of it would make potential bomb throwers of us all. In the very nature of things the law may not punish any one for the wrong he might do if he were so disposed. It is a very Nero of jealous tyranny that would so take counsel of its fears.

I.

THE COURT BELOW ERRED IN NOT DECREEING THAT THE AGREEMENTS ENTERED INTO BY THE DEFENDANTS AND UPON WHICH THE PETITION IS BASED WERE LAWFUL UNDER THE PATENT LAWS OF THE UNITED STATES AND NOT SUBJECT TO THE PROVISIONS OF THE SHERMAN ANTI-TRUST ACT.

Statement of Facts :

The defendant Edwin L. Wayman was subpœnæd and called as the first and principal witness on the part of the Government, and was examined at length (v. I., pp. 1-218). He was recalled by the defendants and testified (v. IV., pp. 98–244, 268–278).

Mr. Wayman testified fully, frankly and freely—his direct examination occupying four days, and his examination on behalf of the defendants occupying four days.

Mr. Wayman's career has so much influence upon the true understanding of this case that it should be stated by way of preamble.

When a lad Mr. Wayman entered the employ of the Western Electric Company as a bill clerk, in 1895. He was promoted at various times, until, in the latter part of 1901, he was sent by the Western Electric Company to Detroit to open a sales office there (v. IV., p. 109).

In that City he occupied offices with Mr. Eugene H. Sloman, a broker and real estate operator, and there sprang up between them a great intimacy (v. IV., p. 109).

Mr. Sloman was, at this time, engaged in experimenting in an effort to draw shells of bath-tubs out of a single sheet of steel (v. IV., p. 110), such shells to be afterwards enameled and to be sold in competition with sanitary enameled iron bath-tubs made of cast iron and enameled.

Mr. Wayman rendered Mr. Sloman valuable aid and assistance in such experiments, among other things, by selling him an electric motor, upon long credit, with which to operate the machine for drawing the sheet steel into forms for bath-tubs (v. IV., pp. 110, 120, 128).

Mr. Wayman was in charge of the sales office of the Western Electric Company at Detroit until 1903, when he went to San Francisco as sales manager of the Supply Department of the same Company (v. IV., p. 110).

Here, as a result of his work, he was promoted to be assistant manager and later manager (v. IV., p. 110). As a result of Mr. Wayman's work at San Francisco, the sales of the Company were more than doubled in a short time (v. IV., p. 111).

He held these positions at the time of the great earthquake and fire in April, 1906 (v. IV., p. 111).

At that time Mr. Wayman, with certain of the employes of the Western Electric Company, was able to reach the building of the Company early on the morning following the earthquake and at the beginning of the conflagration which destroyed San Francisco (v. IV., p. 111). He at once policed the building with employes, got out the fire fighting apparatus, and saved the building and its contents—the latter valued probably at $1,000,000 (v. IV., p. 111), while all the surrounding buildings were destroyed including all the other electrical supply houses (v. IV., p. 111).

When Mr. Wayman went to San Francisco the business of the Western Electric Company in the Supply Department amounted to about $250,000 a year. During Mr. Wayman's administration it increased to a million dollars a year, and the Telephone Department to seven million dollars a year (v. IV., pp. 111, 112). Mr. Wayman was in the employ of the Western Electric Company and its branch companies for eleven years (v. IV., p. 126).

During Mr. Wayman's connection with the Western Electric Company a large portion of its business, including lamps, sockets, switches, cut-outs, etc., was done under patent License Agreements, similar to those in the case at bar and no one questioned their legality (v. IV., pp. 110, 112, 113, 126). Mr. Wayman, as salesman for the Western Electric Company, and as manager, thus became thoroughly familiar with such license contracts and with the operation of business under them.

Meanwhile, Mr. Sloman's work had grown, a factory had been erected, and in October, 1906, Mr. Wayman, at the request of Mr. Sloman, severed his connection with the Western Electric Company and went to Detroit as sales manager of the Seamless Steel Bath Tub Company, which Mr. Sloman had organized to manufacture and sell Seamless Steel bath tubs, manufactured under certain Letters Patent of the United States which he had secured (v. IV p. 113).

The organization of the Company, and the business conducted by it, was the result of the experiments in which Mr. Sloman was engaged, as above stated, in 1901 (v. IV p. 113) when Mr. Wayman first met him.

Mr. Wayman having become thoroughly familiar with the manner and advantages of conducting business under Patent License Agreements, while with the Western Electric Company, endeavored to secure similar license agreements under the patents owned by the Seamless Steel Bath Tub Company, with its customers, and did secure such agreements with some of its customers; among others, the Republic Manufacturing Company (v. IV., pp. 114-120) and with some manufacturers, all looking to exploiting the company's patents on Seamless Steel tubs. He was not able, however, to secure such license agreements with a sufficient number of the customers of the Seamless Steel Bath Tub Company or the other manufacturers of bath tubs (v. IV., pp. 114, 117) to get the full advantage of the patents, and, therefore, he was obliged to abandon his plan (v. IV., pp. 114-120).

At this time the Seamless Steel Bath Tub Company was a member of an association of manufacturers of Sanitary Enameled Ware, organized for the purpose of promoting better trade conditions and increasing and improving the busi-

ness in Sanitary Enameled Ware ; and Mr. Wayman represented the Seamless Steel Bath Tub Company in this association (v. IV., p. 128). He thus came to know other manufacturers of enameled ware, and also became familiar with the conditions of the Sanitary Enameled Ware business generally, the difficulties to be met, and the possibilities of the trade therein.

He personally, as salesman, sold more than 20,000 bath tubs manufactured by the Seamless Steel Bath Tub Company thereby becoming familiar with the commercial side of the business ; and he was also familiar with the manufacturing side (v. IV., p. 127).

In the early part of 1907 the Seamless Steel Bath Tub Company was notified by the Standard Sanitary Manufacturing Company that that Company was the owner of the Arrott patent, No. 633,941 (the basic patent involved in the case at bar) ; that the said patent had been sustained by the Courts in a suit against the J. L. Mott Iron Works, and that the Seamless Steel Bath Tub Company was infringing the invention covered by that patent, and that the Seamless Steel Bath Tub Company was required to cease such infringement (v. IV., p. 101). This was a very serious matter for his Company, as will appear.

The steel shells were one hundred or more pounds lighter than the ordinary cast iron tub, and consequently, on account of the difference in the quantity of the material in the tub and on account of the difference of kind of material, the steel shells did not retain the heat so long as the cast iron tubs (v. IV., pp. 112, 113) ; so that an enameling method whereby the enamel could be put on quickly was indispensable.

The only known method of doing this was by using the Arrott dredger (v. III., p. 117). As a result of experiments and experience Mr. Wayman came to the conclusion that it would be impossible, without the use of the dredger covered by the Arrott patent, to distribute the enameling powder over the tub with sufficient rapidity to get the powder on while the tub retained its heat (v. IV., pp. 101, 102).

Mr. Wayman consulted his patent attorney, Mr. James W. Whittemore, as to whether the device being used in the factory of the Seamless Steel Bath Tub Company was an infringement of the Arrott invention, and was informed by him that it was,

and also that he (Mr. Whittemore) knew of no equivalent device to be substituted for the Arrott invention (v. IV., p. 108). Being in this position, Mr. Wayman took up with the Standard Sanitary Manufacturing Company the question of securing a license under the Arrott patent for the Seamless Steel Bath Tub Company. At first the Standard Sanitary Manufacturing Company declined to give a license, stating that it did not care to grant licenses under the patent (v. IV., p. 102). After continued negotiations, however, the Standard Sanitary Manufacturing Company advised the Seamless Steel Bath Tub Company that it would grant a license under the patent to the Seamless Steel Bath Tub Company. Thereupon, Mr. Wayman asked to have the license papers prepared and sent him (v. IV., p. 109). This was not promptly done, however, and shortly thereafter the Seamless Steel Bath Tub Company, for want of sufficient capital, the death of its financial backer, and on account of the panic of the Fall of 1907, got into financial difficulties, and Mr. Wayman did not follow up procuring the license (v. IV., p. 109, 116).

From the early part of 1908, until the Summer of 1909, Mr. Wayman was constantly engaged in trying to secure financial assistance for the Seamless Steel Bath Tub Company and to reorganize the Company (v. IV., p. 109, 126). He did not succeed, however. He was a stockholder and largely interested in it (v. I., p. 49).

Mr. Wayman had also endeavored to secure control of the Arrott patent in another way, as follows:

Early in the Spring of 1908, knowing the importance of the Arrott patent in the manufacture of enameled ware, Mr. Wayman endeavored to have the Standard Sanitary Manufacturing Company license the other manufacturers of Sanitary Enameled Iron Ware for the purpose of improving the trade conditions (v. IV., p. 102). He interested Mr. George E. Day, of the Day-Ward Company, and Mr. Thomas R. Barnes, of the Barnes Manufacturing Company (v. IV., pp. 102, 103). But the Standard Sanitary Manufacturing Company stated that it was unwilling to grant licenses; and the other manufacturers were unwilling to take licenses from the Standard Sanitary Manufacturing Company because, as licensees for the purpose of collecting royalties) their books would have to be open to the Standard Sanitary Manufacturing Company, a competitor.

Under these conditions, Mr. Wayman conceived the idea of organizing a holding company, with capital contributed by himself, Mr. Day, Mr. Barnes and some others, to buy the Arrott patent from the Standard Sanitary Manufacturing Company, and license, on terms, the Standard Sanitary Manufacturing Company and other manufacturers (v. IV., p. 103).

With this end in view, and on or about March 7th, 1908 (v. IV., p. 103, Defendants' Exhibits 14, 15, 16, 17), Mr. Wayman, Mr. Day and Mr. Barnes visited Trenton, where they conferred with Mr. Matlack, manager of the Potteries Selling Company, with regard to the organization and operation of that Company, thinking that a similar company might serve their purposes. Thereafter, pursuant to Mr. Wayman's plan, Mr. Day and Mr. Barnes conferred with Mr. Torrance, of the Standard Sanitary Manufacturing Company, who stated that his Company was unwilling either to sell the Arrott patent or to enter into any arrangement which would lessen the advantage which it had by reason of its ownership of the Arrott patent (v. IV., p. 108).

Thereupon that plan was abandoned (v. IV., p. 108).

Early in August, 1909, Mr. Wayman was informed by Mr. A. H. Cline, Jr., of the United States Sanitary Manufacturing Company, that the Association of Sanitary Enameled Ware Manufacturers was about to be reorganized and a new Commissioner appointed. Mr. Cline suggested that Mr. Wayman apply for the position (v. IV., p. 126). Not having succeeded in getting capital to reorganize the Seamless Steel Bath Tub Company, he took the suggestion under advisement. He talked with his wife and with Mr. Colquitt, one of his business associates. All three agreed that it would afford Mr. Wayman an excellent opportunity to continue his efforts to buy the Arrott patent and of establishing such relations with the various manufacturers of Sanitary Enameled Ware as would enable him to present his ideas with regard to the advantages of patent licenses under the Arrott patent in the most favorable manner (v. IV., p. 127).

The articles of association of the Association and the objects show that it was a pure trade organization, and it was expressly provided that "the Association is not formed to control or regulate prices of goods manufactured by its members v. IV., pp. 129-132).

Accordingly, Mr. Wayman applied for the position suggested by Mr. Cline in connection with the Sanitary Enameled Ware Association, and was elected (v. IV., p. 127). There were three candidates and the vote was divided—Mr. Wayman being elected by a majority of one or two (v. IV., p. 16).

Mr. Wayman assumed the duties of the position within a few days after his election (v. IV., p. 127).

With his real purpose in mind, he applied for the necessary financial aid to secure the Arrott patent to Mr. Sloman, with whom his relations of a very intimate character had continued and who had offered to aid him in any way he could (v. I., p. 139; v. IV., p. 128). Mr. Sloman agreed that if Mr. Wayman could secure the patent he would aid him financially in the matter whenever it was necessary (v. I., p. 139; v. IV., p. 128), and the event proved that he did (v. IV., p. 128, Defendant's Exhibits, Nos. 23–27).

In the latter part of August, 1909, Mr. Wayman spoke to Mr. Theodore Ahrens, one of the defendants and President of the Standard Sanitary Manufacturing Company (v. IV., pp. 134, 139) with regard to purchasing the Arrott patent. Mr. Ahrens referred him to Mr. E. L. Dawes, also one of the defendants and Vice-President and General Manager of Factories of the Standard Sanitary Manufacturing Company (v. IV., p. 134).

He conferred frequently with Mr. Dawes after that (v. I., p. 139; v. IV., pp. 134, 135). At first Mr. Dawes was not interested by the proposition, but Mr. Wayman kept at it, dwelling upon the great improvement in enameled ware that would come through the use generally of the Arrott dredger; explaining to him that he proposed to include in the licenses which he would grant a provision prohibiting the manufacture and sale of "seconds," and that thus through greatly improved enameled ware, which could only be made by using the Arrott invention and by the elimination of "seconds," the Standard Sanitary Manufacturing Company, which did not manufacture or sell "seconds," would have to compete only with goods of a similar high class to its own product and would greatly increase its business with the general increase which would follow the improvement, since the Standard manufactured and sold about 50 per cent. of the ware sold in the United States (v. II., pp. 188–9, Petitioner's Exhibit 132); Mr. Dawes became interested (v. IV., p. 134, 135).

"Seconds" are articles of enameled ware which are in any respect defective, and which will not pass inspection for the grade for which they are intended, but which were then being sold, and are now sold by some manufacturers as of the grade for which they were intended (v. IV., pp. 40, 57, 142); for instance, the Iron City Sanitary Manufacturing Company sells its product to jobbers by the run of the kiln, without itself grading it at all (v. IV., p. 264). The result was, and is, that the jobber who purchases the product of the Iron City Sanitary Manufacturing Company may sell in competition with the Standard Sanitary Manufacturing Company's high-class product an article of a very inferior quality. Such jobber can necessarily charge a very much lower price than the Standard Sanitary Manufacturing Company can afford to charge, but which the Standard Sanitary Manufacturing Company must meet in competition.

One of the great evils of "seconds" appears from the testimony (v. IV., pp. 45, 52, 66) to be that plumbers bid upon specifications requiring a certain high class of articles of enameled ware, that they then go to a jobber and purchase an inferior article (a second) which they furnish to the builder, or owner, with a label of their own, as the article specified. The result is that the house-owner gets an inferior article, is deceived, and, upon learning, by use, the defective character of the article, blames the jobber who had no knowledge what the plumber was required to furnish, and no power to compel him to buy the article specified (v. IV., pp. 45, 52, 66). Thus Sanitary Enameled Ware was getting a very bad reputation, and it was becoming increasingly more difficult to maintain or extend the sale (v. A., pp. 50, 62, 75, 97; v. II., p. 97; v. IV., pp. 39, 42, 58). The sale of porcelain and vitreous china ware was increasing in competition with sanitary enameled ware (v. I., p. 67; v. IV., pp. 134–138, 142, 143, 185).

With the elimination of "seconds" the plumber was able to get only an honest article and thereby the jobbers, the builder, and the owner were protected and benefited (v. IV., pp. 46, 55, 58).

Mr. Wayman's argument as to the making of high-class ware exclusively, such as could be manufactured only by the use of the Arrott dredger and with regard to the advantages of the elimination of "seconds," impressed Mr. Dawes. He

saw thereby a great improvement in the trade in Enameled Ware, to which he had devoted his life (v. IV., p. 135), and, after some further negotiations, he agreed, on or about December 28, 1909, to give Mr. Wayman an option upon the Arrott patent for six months, either to take an exclusive license with a right to license others upon such conditions as he might prescribe, the Standard Sanitary Manufacturing Company retaining a non-exclusive license, or, if the Standard Sanitary Manufacturing Company decided to take a license, to purchase the patent outright (v. IV., pp. 99, 100, 136).

Mr. Dawes says that the price at which Mr. Wayman was to secure control of the Arrott patent was fixed at this time, after he (Dawes), without Mr. Wayman's knowledge, had consulted with the Executive Committee of the Standard Sanitary Manufacturing Company (v. III., p. 479).

Mr. Wayman testified that the price was determined by fixing upon a method of calculating it, but that the exact number of dollars was not definitely named until about the middle of March, 1910 (v. IV., p. 276).

The price paid was $10,000 for an assignment of the patent, subject to an option on the part of the Standard Sanitary Manufacturing Company to have the patent reassigned at the end of two years (v. I., pp. 129, 131, 133, 134–137, 172–178).

The price was arrived at by adding together the purchase price paid by the Standard Sanitary Manufacturing Company to Arrott, the cost of litigation in sustaining the patent, and a further sum equal to 50 per cent. of this amount—making a total of $85,000, and dividing this by 17—making the cost $5,000 per year to the Standard Sanitary Manufacturing Company. Mr. Wayman bought it, but after two years the Standard Sanitary Manufacturing Company could get it back (v. IV., p. 276).

That this was an adequate consideration appears from the fact that the inventor and patentee, J. W. Arrott, Jr., in 1905, sold the patent to the Standard Sanitary Manufacturing Company for $35,000 (v. III., p. 419). In 1905 the patent had eleven years to run, which would make the consideration paid Arrott, prorated through the life of the patent, something less than $3,200 a year; while Mr. Wayman paid at the rate of $5,000 a year.

Prior to securing the option upon the Arrott patent, and about December 15, 1909, Mr. Wayman had secured an option from the J. L. Mott Iron Works upon the Ditheridge patent (v. I., pp. 33, 34, 187; v. IV., p. 99), and on or about January 10, 1910, he secured from the L. Wolff Manufacturing Company an option upon the Lindsay patent (v. I., p. 34, v. IV., p. 99).

These two last named patents were procured by Mr. Wayman because they were believed by him to be infringing patents (v. IV., p. 138). They were infringing patents (v. IV., p. 360).

Immediately after securing the option (December 28, 1909), upon the Arrott patent, which had been established as the basic patent (v. IV., p. 138), Mr. Wayman sent out to practically all the manufacturers of Sanitary Enameled Iron Ware a circular letter (December 30 and 31, 1909), informing them that he had procured from the Standard Sanitary Manufacturing Company the right to license the other manufacturers of enameled ware under the Arrott patent (v. I., p. 155).

Mr. Wayman followed this up by talks with the various manufacturers at their several places of business (which he visited for the purpose) and elsewhere, whenever he had the opportunity, urging upon them in season and out of season the importance of improving the ware, the selling only of honest articles, and that he could bring this about by granting them licenses under the patent, containing restrictions, explaining to them the plan he had in mind and the advantages which he conceived would accrue therefrom (v. IV., pp. 137, 138, 140, 141).

He worked also upon the details of a license, getting his ideas chiefly from the former licenses he had drawn while with the Seamless Steel Bath Tub Company and his experience as a saleman of bath tubs, as well as from the patent licenses he had worked under while with the Western Electric Company. In the original exhibit portions are stricken out and certain other portions interlined or added—this being done at the time the rough forms for the present license agreements were being made. In the printed exhibit, the insertions are in italics and the matter stricken out in black type (v. IV., pp. 121, 144, 304–307).

Then there was a meeting of the Sanitary Enameled Ware

Association in Pittsburgh on February 1, 1910. After the adjournment of the meeting Mr. Wayman took advantage of the presence of a large number of the manufacturers to further talk to them, informally, about his plan. Some objected, some did not know what to say and the majority said they would enter into such a license (v. I., p. 31; v. IV., pp. 141, 142). Thereafter he wrote to the various manufacturers a letter similar to Petitioner's Exhibit No. 12, dated February 7, 1910 (which was the copy sent to Mr. Kohler, of the J. M. Kohler Son's Company), continued to visit them at their various factories, and whenever he could meet any of them he urged the use of the invention covered by his patents (v. I., p. 29, Petitioner's Exhibit No. 7).

Not having secured any definite or tangible results from his work in January and February (1910), Mr. Wayman asked the representatives of several of the leading manufacturers of Sanitary Enameled Iron-Ware to meet him in Chicago, on March 2, 1910 (v. I., p. 12; v. IV., pp. 140, 144; Petitioner's Exhibit No. 51, v. I., p. 94), at which meeting he again outlined the plan of his proposed patent licenses, and invited expressions of opinion from those present whether their companies would take licenses from him under the Arrott and other patents (v. IV., pp. 140, 144).

He accomplished very little by this effort, and he determined to prepare a memorandum embodying some of the features of his scheme and try to get that signed. Accordingly that night, at his mother's-in-law, Mr. Wayman, without assistance and without consultation with, or the advice of, anyone—lawyer or layman—drew up a memorandum of agreement covering the granting of licenses by him under the patents he might control with regard to the manufacture of Sanitary Enameled Iron Ware; a copy of the agreement was attached to the petition as Exhibit 3, and is petitioner's Exhibit No. 3 in the testimony (v. IV., p. 145).

Mr. Wayman took this agreement around to the various manufacturers separately, at their several places of business, and secured its execution by those companies, the names of which appear upon the Exhibit, between March 2d, 1910, and March 17th, 1910, inclusive (v. IV., pp. 147-149).

The first consent secured was that of the L. Wolf Manufacturing Company, which is located at Chicago, in

which city the paper was prepared. This was procured by Mr. Wayman on March 3rd, 1910, without consultation by that Company with any of the other manufacturers of Sanitary Enameled Iron Ware (v. I., p. 28, v. IV., pp. 146, 147); and none of the other companies executing the agreement conferred or consulted with any of their competitors before signing the same (v. IV., pp. 146, 147, 148).

After Mr. Wayman had procured the execution of the paper, Petitioner's Exhibit No. 3, he prepared a form of License Agreement and of a Jobber's License Agreement, for the use of the inventions covered by the Arrott, Ditheridge and Lindsay patents, which were modeled upon the forms of similar agreements which had been used by the Western Electric Company and the Seamless Steel Bath Tub Company (v. IV., p. 121, Defendants' Exhibit No. 20).

Having done this, he consulted Mr. Edwin E. Jackson, Jr., of the firm of Noble, Jackson & Hubbard, New York City, who had had a number of years experience with similar licenses, and who suggested certain changes and modifications in the forms of the proposed License Agreement and Jobber's License Agreement prepared by Mr. Wayman (v. I., pp. 138, 139; v. IV., pp. 152, 218).

Mr. Jackson directed Mr. Wayman's attention to a number of cases in which similar license agreements had been sustained by the Courts, including the case of *Rubber Tire Wheel Co. vs. Milwaukee Rubber Works Co.* (C. C. A., 7th Cir., April 16, 1907), 154 F., 358; *Indiana Mfg. Co. vs. J. I. Case Threshing Mach. Co.* (C. C. A., 7th Cir., April 16, 1907), 154 F., 365; *Goshen Rubber Works Co. vs. Single Tube Automobile & Bicycle Tire Co.* (C. C. A., 7th Cir., Oct. 29, 1908), 166 F., 431; *Victor Talking Mach. Co. vs. The Fair*, 123 F., 424; and *Heaton Peninsular Co. vs. Eureka Specialty Co.* (C. C. A.), 77 F., 294; and advised him that if the patents under which he proposed to give licenses covered inventions which were necessary to the successful manufacture of Sanitary Enameled Iron Ware, that the proposed License Agreements were lawful, and that Mr. Wayman, as the owner of such patents, would have the right to prescribe the terms and conditions which were included in said License Agreements (v. IV., pp. 153, 154).

Mr. Wayman also consulted Mr. Byrnes, of Bakewell &

Byrnes, Mr. Christy, of Christy & Christy, and Gov. Lyon, of Lyon & Hunter, by all of whom he was advised the license agreements were lawful (v. IV., p. 153); and Mr. Wayman had never heard their legality questioned until Mr. Kohler suggested it (v. I., pp. 97, 109, Petitioner's Exhibits Nos. 53, 61; v. IV., pp. 113, 193).

Mr. Wayman had the License Agreement and the Jobber's License Agreement, as changed and modified at his conference with Mr. Jackson, printed as sample copies of the proposed License Agreement and Jobbers' License Agreement, and sent such sample copies on or about March 24, 1910, to each of the Sanitary Enameled Iron Ware manufacturers whom he hoped would take licenses from him, with a letter requesting them to come to the Hotel Astor, New York, on March 29 and 30, 1910, where he hoped to further explain his patent licenses in the expectation of procuring their acceptance (v. I., pp. 36, 41, 97, Petitioner's Exhibit No. 54).

He arranged to have Mr. Jackson present at the conference to advise those present as to the legal questions involved (v. I., p. 73; v. IV., p. 218).

Numerous representatives of various manufacturers of Sanitary Enameled Iron Ware met Mr. Wayman at the Hotel Astor on March 29, 1910, and Mr. Jackson then and there explained the legal situation with regard to licenses under patents, citing various cases, among others those hereinbefore referred to (v. I., pp. 73, 228, 239, v. IV., p. 218). Mr. Jackson asked if the invention covered by the Arrott patent was necessary to the successful and economical manufacture of Sanitary Enameled Iron Ware, and, upon receiving reply from several of the manufacturers present that it was, stated that if that was so, the proposed License Agreements were entirely legal.

Some of the manufacturers, after Mr. Jackson had finished his statement, asked him questions which he answered (v. I., p. 228).

After Mr. Jackson left, the matter was discussed generally, and it being apparent that on account of the number of those present definite results as to the details of the proposed License Agreements could not conveniently be settled, and it being necessary, in order to induce a large number of manufacturers to take licenses, that the licenses should be substantially uniform, Mr. Wayman suggested a committee of

five manufacturers to represent the manufacturers in conferring with Mr. Wayman as to the details of the License Agreements, and suggesting to him what would be satisfactory to the manufacturers. This was the Committee which afterwards met and held sessions at Mt. Clemens, Michigan, from about April 8th to April 14th, 1910, and elsewhere later (v. I., pp. 17, 44, 46; v. IV., p. 195).

This Committee met with Mr. Wayman at Mt. Clemens, Michigan, where various manufacturers were consulted as to the preferential discounts desired by their companies, letters from others were considered, and the Committee and Mr. Wayman agreed upon the theory upon which the prices to be established by Mr. Wayman should be figured, and the Committee made various suggestions as to the preferentials; and Mr. Wayman after considering the same, fixed the preferentials (v. I., pp. 67, 68; v. IV., p. 183).

At Mt. Clemens Mr. Hoelscher suggested that Mr. Wayman transfer his options to a holding company. Mr. Wayman refused to do this, but he suggested that he would employ an Advisory Committee of manufacturers to assist in the administration of the licenses. He took up the matter with his counsel, and between them the paragraph as to the commission was prepared as it is in the License Agreement (v. I., pp. 45, 46; v. IV., pp. 206, 207).

Mr. Wayman proceeded to put the License Agreement and the Jobbers' License Agreement in final form, and on April 16, 1910 (v. I., pp. 74, 75, 103; Petitioner's Exhibit No. 31), sent a letter to the manufacturers of Sanitary Enameled Iron Ware stating that meetings had been held at Mt. Clemens beginning April 8, 1910, and ending April 14, 1910, and that additional meetings would be held April 19, 1910, at Pittsburgh, and on Thursday, April 21, 1910, at New York, which would conclude preliminaries, and stating that a meeting would be held in New York during the first week in May for the purpose of executing the final License Agreement papers.

Some of the manufacturers were not using the automatic process, others were using the invention covered by the patent without the permission of the owners of the patent, others were using devices which infringed the Arrott patent, and had been notified by the owner of the Arrott patent to cease such infringement on penalty of being sued, others had compro-

mised with the owners of the Arrott patent and, though not formally licensed, were paying the owner of the Arrott patent for the right to use the patent, or had paid the owner of the Arrott patent for the past use of the invention covered by the patent, and all knew the patent had been sustained by the Courts (v. IV., p. 134).

Mr. Wayman had induced Mr. Dawes, pending the negotiations for the purchase of the Arrott patent, to refrain from suing the infringers (v. IV., p. 134), and urged, as inducements to the manufacturers to take licenses from him under the Arrott patent, the fact that those who had been unlawfully using the invention, or who had been using an infringing device, would be relieved from any liability for damages for past infringement, and would be legally entitled to use the invention; that others who had not had the benefit of the use of the invention would secure such benefit upon reasonable terms, and that all would benefit by the elimination of "seconds" (v. IV., pp. 167-173, 204).

About the middle of March, 1910, Mr. Wayman, having secured individual agreements with a majority of the manufacturers of Sanitary Enameled Iron Ware to take licenses from him under the Arrott, Lindsay and Ditheridge patents, decided to exercise his options to purchase said patents, and procured the preparation of the proper agreements and assignments of said patents to be drawn by Messrs. Bakewell and Byrnes, patent attorneys of Pittsburgh, Pennsylvania (v. I., pp. 27, 32; v. IV., p. 151).

The form of agreement to assign and the assignment of the Arrott patent were delivered, about the time of its preparation, to Mr. Dawes, who referred it to Messrs. Christy & Christy, patent attorneys of the Standard Sanitary Manufacturing Company, who retained it for examination, and did not return it until about the time it was executed, May 4th, 1910 (v. IV., p. 151).

Having substantially concluded his arrangements to secure control of the letters patent named, and to grant licenses thereunder, Mr. Wayman applied to Mr. Sloman for the financial aid promised. Mr. Sloman said that he did not have the cash, but could loan Mr. Wayman stock upon which he could borrow the necessary money. The stock to which Mr. Sloman referred was stock of the Universal Electric Welding Company,

worth, at that time, about $75 a share. Mr. Sloman was a large borrower at the People's Bank of Detroit, Michigan, where he lived. For this reason it was not deemed advisable to offer said Electric Company stock to said Bank as security for a loan. Mr. Wayman had arranged for a loan with the President of the Bank. In this situation on May 2d, 1910, he applied to Mr. W. A. Myler, one of the defendants in this suit and the Treasurer of the Standard Sanitary Manufacturing Company, for a loan of Standard Sanitary Manufacturing Company stock, as that stock had a rating upon the market and would undoubtedly be accepted as collateral by the People's Bank of Detroit (v. I., pp. 135-139, 172, 178; v. IV., pp. 177-182, 198; Defendants' Exhibits Nos. 23-27).

Mr. Myler agreed to personally loan Mr. Wayman 100 shares of the stock of the Standard Sanitary Manufacturing Company, which was his personal and individual property, and to accept as security for said loan 300 shares of the Universal Electric Welding Company stock, which Mr. Sloman had given Mr. Wayman (v. IV., pp. 177-182).

Mr. Wayman then delivered to Mr. Myler the 300 shares of Electric Welding Company stock, and received from Mr. Myler 100 shares of the Standard Sanitary Manufacturing Company stock, which he sent to the People's Bank of Detroit as collateral for a loan of $7,000 which was made to him by said Bank (v. IV., p. 177).

Out of this $7,000 Mr. Wayman paid the Standard Sanitary Manufacturing Company $5,000 for the assignment of the Arrott patent, and gave his note for $5,000 (since paid on its due date) for the balance of the consideration of $10,000, for the assignment of the said patent to him by the Standard Sanitary Manufacturing Company (v. I., p. 136).

The agreement to assign and the assignment of the Lindsay patent were prepared by Messrs. Bakewell & Byrnes, about the middle of March, 1910, and were delivered to the L. Wolff Manufacturing Company, but were not executed until on or about May 5, 1910, when the consideration was paid out of the above-mentioned loan of $7,000 (v. IV., p. 151).

The agreement to assign and the assignment of the Ditheridge patent were prepared by Messrs. Bakewell & Byrnes about the same time as the others, and were delivered to Mr. Hammann of the J. L. Mott Iron Works. Mr. Ham-

mann misplaced the papers and duplicates were afterwards prepared and sent to the J. L. Mott Iron Works, which were executed on or about May 5, 1910, at the same time that the consideration was paid and the License Agreements executed by the J. L. Mott Iron Works (v. I., p. 136).

On May 6, 1910, thirteen of the manufacturers of Sanitary Enameled Iron Ware complied with the request of Mr. Wayman, and sent their representatives to New York City where, at the offices of Messrs. Noble, Jackson and Hubbard, the License Agreements were executed by them and Mr. Wayman (v. I., pp. 41, 111, 157).

At the time the License Agreements (Petitioner's Exhibit No. 9) were executed the Jobbers' License Agreements (Petitioner's Exhibit No. 10) and the Price List (v. I., p. 210; Petitioner's Exhibits Nos. 41, 133), were not entirely completed, but the theory on which they were being prepared was explained to the Licensees (v. IV., p. 269), and that they would form a part of the License Agreements.

The Price-List (Petitioner's Exhibit No. 41,133), establishing the price to plumbers (Petitioner's Exhibit No. 41,133; v. II., p. 76), contained approximately 300 pages with over 35,000 discount calculations giving delivery prices at all jobbing points in every State, and equalizing rates to approximately 4,000 towns (Petitioner's Exhibit No. 43, v. I., p. 89; v. IV., p. 269), and was therefore, work requiring time, and Mr. Wayman, with six assistants, spent four weeks' time in its preparation. None of the Licensees participated in its preparation, the prices were entirely fixed by Mr. Wayman, and none of the Licensees knew until the receipt of the Price List what the prices would actually be.

At the meeting of May 6, 1910, and after the License Agreements had been executed, the Commission provided for in the License Agreements (Petitioner's Exhibit No. 9) was elected by ballot by the Licensees, the same persons who had formed the Committee which met at Mt. Clemens being selected, at Mr. Wayman's suggestion that they were entirely familiar with all the terms and provisions of the License Agreements, etc. (v. I., pp. 45, 46).

This Commission had no relation to, nor was it suggested by, nor did it have the same power as, the Executive Committee referred to in Petitioner's Exhibit No. 109 (v. IV., pp. 216,

217). The powers of the Commission were merely advisory and Mr. Wayman finally determined what should be done, except that as to prices and discounts he could not act without the consent of a majority of the Commission (v. I., pp. 47, 66, 85, 86).

Immediately upon the execution of the License Agreements Mr. Wayman proceeded to perfect and to have printed the Price Lists. (v. I., p. 89; v. IV., p. 269; Petitioner's Exhibits Nos. 41, 133).

It was found impossible to have the License Agreement go into effect before June 1st, 1910, or the Jobber's License Agreement before June 6th, 1910, on account of the amount of work which it was necessary that Mr. Wayman should do before they could be put in operation; but Mr. Wayman immediately proceeded to issue bulletins advising the Licensees and the Jobbers when the License Agreements and the Jobbers' License Agreements would go into effect (v. I., pp. 89, 91; Petitioner's Exhibits Nos. 43, 44), instructing the Licensees as to the instructions to be given by them to the Jobbers when the Jobbers' License Agreements were sent out, and which instructions Mr. Wayman himself prepared, (v. I., p. 91; Petitioner's Exhibit No. 46), notifying the Licensees to have the automatic dredger with the necessary accessories at once installed (v. I., p. 205; Petitioner's Exhibit No. 125), which was done forthwith; preparing and issuing a circular of general instructions to the jobbing trade, explaining the purposes which it was sought to accomplish by the License Agreements and the method of operation thereunder (Petitioner's Exhibits Nos. 45 and 213, v. II., p. 332).

The provisions in the License Agreements as to prices were intended to enable the Licensees to make a reasonable profit, so that they would be able to maintain and improve the quality of the ware, and pay the royalties reserved (v. IV., pp. 231, 232). The royalties were, when the testimony was taken, still being paid (v. IV., pp. 241, 242).

On or about June 20, 1910, a conference was held at the offices of Messrs. Noble, Jackson & Hubbard, between Mr. Grosvenor and Mr. Darling, on the part of the Government, Mr. Jackson and Mr. Noble, on the part of Mr. Wayman, and Mr. Wayman himself.

The situation was gone over with Mr. Grosvenor and he

was furnished with a number of papers. Afterwards other papers which he desired were furnished him, until the Department of Justice had, either through oral explanation or the papers furnished it, a complete knowledge of the facts in the case.

It was after this, and on or about July 22, 1910, that the Government filed its petition in Equity in the Circuit Court of the United States for the District of Maryland, alleging the facts hereinbefore stated to constitute combination and conspiracy to restrain interstate trade and commerce, and an attempt to monopolize a portion of such trade in violation of the Sherman Anti-Trust Act.

On or about December 6, 1910, indictments were found in the District Court of the United States for the Eastern District of Michigan against the same defendants upon the same matters, transactions and things upon which this proceeding was based (v. III., p. 428). This was while the Government was still taking its testimony, though it had nearly completed it. The defendants had had no opportunity of taking any testimony in support of their defense.

When it was endeavored to obtain the testimony of certain defendants in support of the defense, the witnesses were warned by a representative of the Government that any testimony they might give which was relevant in the civil case might and probably would be relevant in the criminal cases, and that inasmuch as they were defendants in each case the testimony given might and probably would tend to incriminate them and might be used against them in the criminal cases, or it might lead to the discovery of other evidence which might be used against them and other defendants in the trial of the indictments (v. III., pp. 428, 429, 437, 446, 447, 453, 454, 461, 462, 471, 481, 491, 502, 514, 519; v. IV., 1, 2, 12); and in consequence of said warning the defendants refused to testify.

At the hearing in the Court below a motion was made, on account of the foregoing facts, for an enlargement of the time of the defendants to complete the taking of their testimony, and for the postponement of the hearing of the case until after the completion of the defendants' testimony (v. A., pp. 102, 103) of which motion the Court said in the majority opinion, "This motion we cannot grant" (v. A., p. 123), giving as a reason that the Sherman Act provided for both crim-

inal and civil proceedings, and it was for the Attorney General to decide whether one or both should be brought.

There was no suppression of competition or absolute fixing of prices, as alleged in the petition (v. A., p. 7) and found by the Court below (v. A., p. 112 ; v. IV., pp. 35, 36, 37, 40, 46, 51, 53, 55, 60, 61, 68, 88, 93, 187, 188, 190, 191, 219, 229, 221).

The defendant Wayman conceived the idea, communicated it to the corporation defendants and their officers, and urged the matter upon them until he finally persuaded them to enter into the licenses. None of the licensees had anything to do with the matter save as moved by Wayman (v. III., pp. 477, 485, 494 ; v. IV., pp. 6, 17).

Attached to appendices A and B are the charge of Judge ANGELL on the trial of the conspiracy indictment and the decision of Judge DENISON on the demurrer to the indictments.

The Court below expressly refused to pass upon the allegations in the petition that the use of the patents was a mere device or subterfuge (v. A., p. 123), basing the conclusion reached by the majority upon the ground that the patents gave their owner no right to impose restrictions upon the terms and conditions upon which and the price at which the product of the use of the invention should be sold ; and upon the further ground that without the patents the agreements were within the Sherman Act (v. A., pp. 113, 122, 123).

On the foregoing facts the majority of the Court below reached its conclusions by considering the manufacturers' and jobbers' license agreements as the basis of this proceeding. It concluded that these agreements were made to fix prices and to suppress competition and for no other purpose, and consequently violated the provisions of the Sherman Act, unless the patent laws gave to the Licensor the right to make such license agreements.

The Court below erred in finding that the agreements destroyed competition and improperly fixed prices ; that they were made for either or both of those purposes, and in failing to consider the situation of the parties to the agreements, the condition of the trade in sanitary enameled iron ware, and all the facts and circumstances surrounding the transaction.

The Court below further erred in finding that agreements affecting competition or fixing prices are necessarily injurious to the public interests, and void without regard to whether or

not they are economic arrangements made for the benefit of the parties thereto in the regulation of their trade, and merely incidentally affecting others.

The Court below further erred in not giving their proper weight as evidence to the sworn answers of the defendants.

The Court further erred in reaching the conclusion that the owner of a patent could not protect his invention by making agreements which controlled the product of the use of his invention, although admitting that by the use of that invention the product was better than if made by any other known method of manufacturing sanitary enameled iron ware; and that the invention covered by the letters patent was useful, enabled the manufacturer to manfacture more economically, in greater quantity in the same time, and permitted the labor of manufacturing to be performed under better conditions both to the manufacturer and to the laborer.

The Law of Patents.

The most recent decision of this Court upon the principle involved in the case at bar, under the patent laws of the United States, is *Henry vs. A. B. Dick Co.*, 224 U. S., 1.

The principle announced in that case is supported not only by reason but by numerous decisions in the Federal Courts. It controls, we submit, the case at bar, and attention is directed to the fact that after the opinion was delivered the plaintiff in error asked leave to file a petition for a rehearing, and the Attorney General and the Solicitor General filed an application and a brief on behalf of the United States for leave to intervene and for a rehearing of the cause; both applications were denied.

The case involved the question whether the owner of Letters Patent covering the rotary mimeograph could sell the machine involving the invention under a license restriction that it might be used only with certain unpatented materials made by the owner of the Letters Patent; the case presented the question of the extent of the patentee's privilege and turned upon the scope of the monopoly or privilege secured to the patentee.

The case came to this Court upon a certificate from the Circuit Court of Appeals in the Second Circuit to get the question which had been decided in so many Circuit Courts and Circuit Courts of Appeal finally disposed of.

The Court pointed out (p. 18) that

> " The books abound in cases upholding the right of a patentee owner of a machine to license another to use it subject to any qualification in respect of time, place, manner or purpose of use which the licensee agrees to accept. Any use in excess of the license would obviously be an infringing use and the license would be no defense * * *."

The Court after pointing out the distinction between the property right in the materials composing the patented machine and the right to use for the purpose and in the manner pointed out by the patent, and stating that the license may be to make, sell and use, or it may be limited to any one of these separable rights, says (p. 24) :

> " The property right to a patented machine may pass to a purchaser with no right of use, or with only the right to use in a specified way, or at a specified place, or for a specified purpose. The unlimited right of exclusive use which is possessed by and guaranteed to the patentee will be granted if the sale be unconditional. But if the right of use be confined by specific restriction, the use not permitted is necessarily reserved to the patentee * * * (p. 25). This right to sever ownership and use is deducible from the nature of a patent monopoly and is recognized in the cases * * * (p. 26). Where, then, is the line between a lawful and an unlawful qualification upon the use? This is a question of statutory construction. But with what eye shall we read a meaning into it? It is a statute creating and protecting a monopoly. It is a true monopoly, one having its origin in the ultimate authority, the Constitution. Shall we deal with the statute creating and guaranteeing the exclusive right which is granted to the inventor with the narrow scrutiny proper when a statutory right is asserted to uphold a claim which is lacking in those moral elements which appeal to the normal man? Or shall we approach it as a monopoly granted to subserve a broad public policy, by which

> large ends are to be attained, and, therefore, to be construed so as to give effect to a wise and beneficial purpose? That we must neither transcend the statute, nor cut down its clear meaning, is plain." * * *

The Court then proceeds to cite with approval *Bement vs. National Harrow Co.*, 186 U. S., 70; *Button Fastener Case*, 77 F., 288; *Paper Bag Case*, 210 U. S., 405; and other cases; and calls attention to the fact that in the *Bement Case* the purpose and effect of the combination and of the contracts between the parties was to fix and keep up the prices at which the licensees might sell the patented harrows, and that although it was claimed that the combination and contracts were obnoxious to the Sherman Act that this Court ruled otherwise, and continues (p. 31):

> "If a stipulation in an agreement between the patentees and dealers in patented articles, which, among other things, fixed a price below which the patented articles should not be sold, would be a reasonable and valid condition, it must follow that any other reasonable stipulation, not inherently violative of some substantive law, imposed by a patentee as a part of a sale of a patented machine, would be equally valid and enforceable. It must also follow, that if the stipulation be one which qualifies the right of use in a machine sold subject thereto, so that a breach would give rise to a right of action upon the contract, it would be at the same time an act of infringement, giving to the patentee his choice of remedies."

And of the argument that a condition restricting the licensee to use the patented machine only in connection with supplies made by the patentee gives to the patentee the power to extend his monopoly so as to cause it to embrace any subject not within the patent which he chooses to require the invention shall be used in connection with, the Court says (p. 31):

> "Of course, the argument does not mean that the effect of such a condition is to cause things to become patented which were not so without the requirement."

The Court points out that the supplies will still continue to be unpatented, that any one will be as free to make, sell and use like articles as they would be without this restriction, save in one particular, namely, that they may not be sold to the licensee of the patentee's machine with the intent that they shall be used in violation of the license.

By selling the machine covered by the Letters Patent subject to the restriction imposed by the patentee, he took nothing from the public and in nowise restricted their legitimate market. The Court points out that the public is always free to take or refuse to take advantage of the invention on the terms imposed. If they be too onerous or not in keeping with the benefits, the public will permit the invention to go unused and will thus lose nothing which it had before until the patent expires, when the public will be free to use the invention without compensation or any restriction, and the Court says (p. 35).

> "The conclusion we reach is that there is no difference, in principle, between a sale subject to specific restrictions as to the time, place or purpose of use and restrictions requiring a use only with other things necessary to the use of the patented article purchased from the patentee. * * * That a violation of any such restriction annexed to a sale by one with notice constitutes an infringing use has been decided by a great majority of the Circuit Courts and Circuit Courts of Appeal, and has come to be a well-recognized principle in the patent law, in accordance with which vast transactions in respect to patented articles have been conducted. * * * A line of decisions, which has come to be something like a rule of property, under which large businesses have been conducted, should at least not be overruled except upon reasons so clear as to make any other construction of the patent law inadmissible."

The foregoing case, we submit, decides the principle which will dispose of this case. It holds that the owner of Letters Patent can control unpatented articles used in connection with the machine embodying his invention.

In the case at bar the owner of the Letters Patent sought to control only the product made by the use of his invention, namely, to prescribe the terms upon which sanitary enameled iron ware, in the final step in the manufacture of which his invention, giving to the manufactured product its character, was used, could be disposed of. In *Henry vs. Dick (supra)*, the articles controlled used in connection with the machine embodying the invention were not changed in their character by the use of the invention. In the case at bar the iron casting is changed into apparently an article made of porcelain, better in quality, more cheaply and expeditiously manufactured, under better conditions to the workmen, and of greater uniformity of excellence than can be made by any other known process; and the restrictions applied to articles produced by the use of the patented invention and were reasonably adapted to extend the use of the invention and enhance its value and protect the owner of the Letters Patent in his ownership. If, as held in *Henry vs. Dick*, the owner of Letters Patent may restrict the use of the patented invention to use only with unpatented supplies purchased from the owner of the Letters Patent for use in connection with the patented article, the owner of the patents, in the case at bar, has not attempted to extend the scope of the production of the patent as far.

The constitutional idea of a time monopoly in a new creation is profoundly wise, as all experience has demonstrated. The right to withhold the use of an invention necessarily involves a right to attach to its use any condition however arbitrary, for the public is none the poorer if the invention is never used, whereas it may be benefited if the invention is brought into use on any terms; and in any event the monopoly lapses with the lapse of time, or is perhaps made valueless by a newer invention inspired by the one it supersedes.

This Court in *Henry vs. Dick, supra*, indicates somewhat the substratum of judicial precedent that made its pronouncement inevitable, but reference to a few of the underlying decisions may not be out of place :

Bloomer vs. McQuewan, 14 How., 539, 548.
United States vs. American Bell Telephone Co., 167 U. S., 224.

Rubber Tire Wheel Co. vs. Milwaukee Rubber Works Co., 154 F., 358.
Goshen Rubber Works vs. Single Tube Automobile & Bicycle Tire Co., 166 F., 431.
Indiana Mfg. Co. vs. J. I. Case Threshing Machine Co., 154 F., 365.
U. S. Consol. S. R. Co. vs. Griffin & Skelley Co., 126 F., 364.
Rupp & Wittgenfeld Co. vs Elliott, 131 F., 730.
New Jersey Patent Co. vs. Schaeffer, 159 F., 171.
New Jersey Patent Co. vs. Schaeffer, 178 F., 276.
Victor Talking Machine Co. vs. The Fair, 123 F., 424.
Fonotipia Ltd. vs. Bradley, 171 F., 951.
National Phonograph Co. vs. Schlegel, 128 F., 733.
Edison Phonograph Co. vs. Pike, 116 F., 863.
Edison Phonograph Co. vs. Kaufmann, 105 F., 960.
The Fair vs. Dover Mfg. Co., 166 F., 117.
Commercial Acetylene Co. vs. Autolux Co., 181 F., 387.
Æolian Co. vs. Harry H. Juelg Co., 155 F., 119.
Crown Cork & Seal Co. vs. Brooklyn Bottle Stopper Co., 172 F., 225.
Crown Cork & Seal Co. vs. Standard Brewery, 174 F., 252.
Crown Cork & Seal Co. vs. Standard Stopper Co., 136 F., 841.
Cortelyou vs. Lowe, 111 F., 1005.
Cortelyou vs. Carter, 118 F., 1022.
Cortelyou vs. Johnson, 138 F., 110; 145 F., 933.
Brodrick Copygraph Co. vs. Roper, 124 F., 1019.
A. B. Dick Co. vs. Milwaukee Co., 168 F., 930.
B. V. D. Co. vs. Wolf & Co.,
Indiana Mfg. Co. vs. Nichols & Shepard Co., 190 F., 579.
Automatic Pencil Sharpener Co. vs. Goldsmith Bros., 190 F., 205.
Thomas A. Edison, Inc. vs. Smith, 188 F., 925.
Waltham Watch Co. vs. Keene, 191 F., 855.
Fuller vs. Berger, 120 F., 274.
Broderick Copygraph Co. of N. J. vs. Mayhew, 131 F., 92; affd. 137 F., 596.

Arrott Patent, Validity of.

No attack is or could be made upon the validity of the patents, because the Arrott patent has been upheld by the Courts. The Circuit Court of Appeals for the Third Circuit (BUFFINGTON, J.) held that the invention covered by the patent

rose to the " plane of the humane " and revolutionized the art to which it belonged (J. L. Mott Iron Works vs. Standard Sanitary Mfg. Co., 159 F., 135; Defendants' Exhibit No. 13, v. IV., p. 294; see also v. III., p. 116).

The petition alleges, and the petitioner sought to prove, that

> " These patents, and the tools they cover, while useful and valuable in the manufacture of Sanitary Enameled Iron Ware, are not essential thereto."

This made it necessary for the defendants to show the character of the invention covered by the patents.

The Inventions covered by the Patents are automatic devices adapted to distribute enameling powder over the surface of the various articles of sanitary enameled iron-ware while at a very high temperature.

Sanitary Enameled Iron-Ware " is made of cast iron. It is coated with enamel. It has the appearance of being porcelain lined. Bath tubs, lavatories, sinks, closet bowls and tanks, and urinals, are among the more important articles made of it " (v. A, p. 104).

The Arrott invention in its aspect as a patentable invention and its mode of operation is described at length by Mr. Edward M. Bentley (v. III., pp. 349–358).

Mr. Bentley graduated at Yale in 1880. He was then for several years an assistant examiner in the United States Patent Office, after which he was engaged for six years in the manufacturing business as one of the originators and owners of the Bentley-Knight Electric Railway Company which built a number of the first successful electric railways in the United States. In 1889 he became connected with the Thomson-Houston Company, and afterwards with the General Electric Company, with which two Companies he continued for five years as Manager of the Department of Inventions and Patents; and since 1894 he has been practising his profession as a patent expert and, as such, made a special study of the art with reference to the Arrott patent (v. III., pp. 349–351).

Mr. Bentley, after pointing out the elements which con-

stitute the value of an invention in a particular art, says of the Arrott invention that it (v. III., p. 369)

> "has created a new standard in this particular art, and as in all arts the creation of such a new standard renders the prior methods obsolete although they still remain practical. For example, it is still possible to propel street cars by horses and it is still done in some cases. Yet the introduction of the electric motor as a propelling agency for street cars has created a new standard that has rendered horse propulsion obsolete."

J. W. Arrott, Jr., the inventor of the Arrott dredger was at the time of making the invention Superintendent of the Enameling Department of the Standard Manufacturing Company, afterwards the Standard Sanitary Manufacturing Company, had been engaged in that business for ten years, and was familiar with the needs of the art and the defects to be overcome, and, in the Arrott dredger solved the questions so satisfactorily that nothing has been found since the invention that is equal to it or which is equivalent to it in the manufacture of sanitary enameled iron ware (v. [illegible] p. 116, 117, 139, 140, 413–417).

The Court below said that the record did not enable it to tell in either absolute or relative figures or percentages how great the saving of time or the bettering of quality was (v. A, p. 116).

In this it erred, as a reference to the testimony of various workmen, and that of Mr. Arrott and Professor Staley, will show (v. III., pp. 293, 294, 415).

Prior to the invention covered by the Arrott patent the distribution of enameling powder over the article to be enameled was done by hand. The original dredge consisted simply of a sieve about 9 inches in diameter with a wooden handle about 3½ or 4 feet long, which was held by the workman in one hand with the end resting under his elbow and the hand turned down with about the middle of the handle resting in the hand. To distribute the powder the sieve was filled to within about 1½ inches of the top with enameling powder weighing from 8 to 10 pounds, and the workman moved the dredge over the article to be enameled in one hand by a hori-

zontal movement while with the other hand he kept up a vertical movement rapping the handle of the dredger with an iron loop which surrounded the handle (v. III., pp. 3, 4, 106, 107, 108, 111, 123, 140, 184, 355, 356; v. IV., Defendants' Exhibit No. 6; and Petitioner's Exhibit No. 278).

We will take bath tubs as an instance to illustrate the method of enameling, though what is said is equally applicable to all articles.

The base is moulded of cast iron upon which a flush coat is put, after which it is heated to a bright cherry red, about 1500 degrees fahrenheit (v. III., pp. 22, 108, 165). This is done in a furnace in the center of which are placed two rails or angle irons for the purpose of raising the bottom of the tub from the bottom of the furnace (v. III., pp. 16, 17).

The tub is then placed upon a movable table capable of being turned towards the workman who enamels the inside of the tub, and also around so as to present the whole of the surface of the tub for enameling (v. III., pp. 17, 18, 19).

In using the dredge above described the workman had to stand so near the red hot iron that he was obliged to wear protective devices (v. III., pp. 22, 70, 108, 134, 169, 401; Defendant's Exhibit No. 6). The work was very exhausting and after enameling a tub the workman would have to go out in the air, remove the protective clothing and sit down and rest, during which time the furnace was necessarily idle (v. III., pp. 23, 28, 33, 107, 146, 147, 165, 167, 175, 176, 180, 187, 224, 227, 237, 238, 246, 397, 409, 414).

For the purpose of moving the workman farther from the heated tub a long handled dredge was introduced in some factories which differed from the former in that its handle was of seamless tubing and about 7 feet long, and the sieve about 10 inches in diameter, and a counterweight was provided which assisted the workman in supporting the weight (v. III, pp. 4, 5, 23, 24, 58, 60, 87, 95, 184, 185; Defendants' Exhibits Nos. 8 and 9; Petitioner's Exhibit No. 279).

The suspending by the counterweight was both an advantage and a disadvantage. When the sieve was full of powder it relieved the workman of the necessity of supporting the weight. As the weight of the powder decreased in the operation of enameling a tub, a point came when the counterweight was greater than the weight to be supported.

This and the influence of the counterweight connection interfered with the workman's control over the dredge in moving it over the article to be enameled, so much so that one workman testified that after trying it he declined to use it, and it came to be known among the workmen as " a man killer " (v. III., pp. 95, 116, 140, 153).

As stated by the Court below, the manufacturer of enameled ware wants

> " to use little power. It is more or less costly. The thinner the enamel coat the better the ware looks and lasts. The whole surface of the article must be covered otherwise it would be almost or altogether useless. The more uniform the coat of enamel is the more sightly and durable it will be. If little powder is to cover the entire surface it must be applied in a finely divided form. Every portion of the surface must receive as nearly as may be precisely the same amount of powder as any other portion of like extent. The sprinkling must therefore be done with great evenness and regularity. It must be done quickly. The powder will not attach itself firmly to the base unless fused upon it. If every minute portion of the surface is to be covered the powder must melt and run in liquid form the minute it touches the article. The sprinkling must consequently be done and finished while the article remains hot enough to liquify the enamel the instant the latter touches the former. For this purpose a minimum temperature of 1200 degrees F. is required " (v. A, p. 114).

That the foregoing result is obtained by the use of the Arrott invention is amply sustained by the testimony.

As stated by the witness Jobe (v. III., pp. 105, 113, 115), who, at the time of his testimony was General Superintendent of the National Sanitary Manufacturing Company, having had seventeen years experience in the enameling business

> " the scientific principle of enameling is to apply the enameling while the tub is at the hottest degree to which you can bring it ; that is when you get the amalgamation of the enamel and the iron and the first coat

is what does it. That is the coat that goes into the iron while the tub is hot and the sooner you can apply it the better is the result, the more sanitary is the article and it will not wear off. * * * It is an advantage" (to have two fine coats instead of three) "in this respect, in that it gives the enamel more show to fit the iron. This enamel will have a greater tendency to hold to the iron and will expand more readily and easily."

On account of the awkward position of the enameler, he had to move from place to place in endeavoring to cover the inside of the tub with the enameling powder, and it took him so long that the tub would become chilled before he could put on as much enameling powder as was desirable, and consequently the powder would not fuse and become properly bonded to the tub, and it was necessary to put the tub back in the furnace (v. III., pp. 12, 109, 116).

The powder came out in "puffs," "bunches," "clumps," "lumps," "clots," or intermittently, as the handle of the sieve was struck (v. III., pp. 7, 111, 164, 166, 173, 357; Defendants' Exhibits Nos. 6, 8, 9). The powder was distributed upon the tub unequally. It was hard to place just as desired. It was impossible to get an even, thin coat, which is essential to good enamel ware (v. III., pp. 7, 8, 110, 111, 146, 148, 149, 154, 164, 173, 179, 184, 185, 188, 193, 240, 247, 330, 336, 384, 399, 404, 406, 410). It was very rare that a smooth tub was made (v. III., p. 15). If the powder was coarse, the enameler might be unable to rap hard enough to force the powder through, or if the tableman was delayed at all, or if for any other cause there was delay, the enameler would be unable to get over the tub before it became chilled, and the tub would have to be put back in the furnace. He might have got sufficient powder on one side, but not on the other, and the consequence would be that by the time the side which was properly covered was fused in the furnace, the other side would be burned off (v. III., pp. 13, 108). There was danger of getting the powder on thick in some places and thin in others, with the result that if in fusing the powder was applied too thick, it would tend to flow, making a ridge, or streak, on the surface of the enamel, and often was not sufficiently fused to the iron, so that when the tub was lifted by the fork, if it

was set down hard or bumped, the powder would slide tending to form a roll where the side and bottom of the tub joined, and it would be necessary to put the tub back on the table and the enameler with an asbestos cloth, or glove, scrape out the powder and then take a bellows and smooth it out, and practically all of that dredge would be lost (v. III., pp. 15, 16, 20, 110, 149, 155). The enamel when the hand dredges were used was porous and often had what was termed an "egg shell" finish, which is unsanitary (v. III., pp. 11, 21, 22, 83, 84, 113). This never happens when the Arrott dredger is used (v. III., pp. 83, 84).

The Arrott dredger—properly so-called since the workman has ceased to sift the powder and merely holds and guides the machine (v. III., pp. 365, 379, Defendants' Exhibits Nos. 4, 5, 7), is pneumatic, has a bowl 9 inches in diameter, and a hollow steel handle about 4 feet 6 inches long, to the end of which is attached a pneumatic hammer or vibrator which is about 9 inches long, making the total length from the end of the hammer to the bowl of the sieve about 5 feet 3 inches. The handle is provided with a button which controls the hammer, and just back of the enameler the air tube is provided with a valve which controls the quantity of air admitted to the hammer. It is also provided in some factories with a counter-weight (v. III., p. 6). The enameler, therefore, has both hands free to handle the dredger, and in consequence is enabled to stand in one position, and by a movement of his arms carry the dredger over the tub and at the same time, when the air table is used, to operate the foot valve controlling the table (v. III., pp. 6, 14, 62, 102, 358). The sieve in the Arrott dredger is ten meshes to the inch finer than the sieve used with the short, or long handled dredges, enabling the use of a finer powder which fuses more readily, and therefore a harder powder may be used (v. III., pp. 6, 113, 114). The flow of the powder is continuous (v. III., pp. 6, 7, 28, 111, 179, 364) as will readily be seen by reference to Defendants' Exhibits Nos. 4, 5 and 7, and is regulated automatically (v. III., pp. 14, 357). With the hand dredges there was no uniformity; one man might be a great deal stronger than another and be able to beat faster and harder, and in nearly every case the tapping became slower

towards the end of the enameling (v. III., pp. 96, 100, 101, 104, 107, 108, 140).

With the Arrott dredger the powder can be deposited just as desired; it is deposited equally; can be distributed in a thin even coat, which, as has been said, is essential to good enamel ware; produces a far superior enamel to that made with the hand dredges, more durable, smoother and better; can be put upon the tub while it is still hot, and if the powder is coarse, by letting in more air, it can be forced through the sieve. The work can be done more quickly, with less effort; the enameler does not have to be so careful in handling the tub lest he bump it and cause the powder to slide, a greater number of articles are produced in the same time of higher grade; the resulting enamel is hard, solid, lustrous, and more sanitary; larger tubs can be enameled and, at a less price per piece, the enameler makes more money (v. III., pp. 7, 8, 10, 11, 14, 21, 22, 28, 35, 38, 109, 110, 111, 114, 115, 150, 151, 154, 155, 165, 166, 171, 174, 177).

In some of the factories the furnace door is operated by compressed air, controlled by a foot-valve operated by the rim-man or helper. This and the air operated table and the powder dummy were made possible by the use of the Arrott dredger (v. III., pp. 32, 91, 292, 293).

The inventions covered by the Ditheridge and Lindsay patents infringe the invention covered by the Arrott patent (v. III., pp. 358–360).

The inventions covered by the Arrott and other patents are essential and necessary to make good enameled ware. They make articles of enameled ware so much superior (v. III., pp. 8, 113, 120, 187, 191, 222, 229, 230, 232, 238, 248, 249, 332, 337, 339, 381, 391, 400, 415–417) to what was made before their introduction, as to require a new classification. They enable an enameler with less effort (v. III., pp. 110, 165, 166) and under very much better conditions (v. III., pp. 116, 173), to make harder, smoother, evener, and more lustrous enameled ware than can be made without them (v. III., pp. 111, 113, 115, 176, 409). The workman gets more money (v. III., pp. 110, 151, 167, 205, 229, 241, 331), the manufacturer gets a larger number of articles at the same furnace cost, and during the same period of labor (v. III., pp. 109, 117, 151, 165, 174, 176, 181, 187, 188, 228, 229, 239, 247, 248, 330, 332, 337, 381, 382,

399, 409, 410, 416). It may be epitomized by saying, as was testified to by many of the witnesses, that assuming that there had been improvements in the table, in the operation of the furnace, and in the enameling powder itself, the invention covered by the patents in suit was still "essential" to the manufacture of enameled ware, and absolutely "necessary" in order to make sanitary enameled iron ware (v. III., pp. 94, 98, 117, 139, 140, 365).

Professor Staley, Assistant Professor of ceramic engineering at the Ohio State University, testified (v. III., p. 288) that he had had practical experience in enameling while in the employ of the McCrum-Howell Company at Blairsville, Pennsylvania; and afterwards at Uniontown, Pennsylvania (v. III., p. 289); and at the Humphryes Manufacturing Company at Mansfield, Ohio (v. III., p. 288). At Uniontown he was superintendent of the plant from the spring of 1907 until July, 1909 (v. III., p. 288). He said that while at Uniontown, experiments were made to find some device that could take the place of the Arrott dredger, but though they built three or four different devices they could not find anything that gave even approximately the results obtained by the use of the Arrott invention (v. III., p. 291).

He said that the pneumatic dredger made better ware at less cost than either of the hand dredges (v. III., p. 292); that in the case of tubs, it was possible to make a piece of ware with two men instead of three, after installing the auxiliary aids to manufacture such as an air-operated table, and an air-operated furnace door, neither of which could be used without the use of the Arrott dredger (v. III., pp. 292, 293), and a piece of ware could be made in less time, which meant a saving in fuel, a saving in labor, a saving in plant, and the ware could be made with less exertion, which meant a saving in labor, therefore a saving in wages and a saving in cost of maintaining the output, and the ware could be made with less skilled labor, which meant a saving in wages and a saving in cost of maintaining the output (v. III., pp. 292, 293).

After the introduction of the use of the pneumatic dredger the men would not use the hand dredges, and that he would not attempt to operate an enameling plant if he could not have the pneumatic dredger, so essential did he deem it to the successful operation of such a plant (v. III., pp. 297, 302).

The testimony of the workmen called as witnesses, men who had had actual experience with the Arrott dredger and with other means of enameling is so convincing as to the commercial necessity of using the Arrott dredger to make high grade enameled ware, possible only by the use of that dredger, that we would like to summarize in more detail the statement of each witness, but that would make this brief too long.

The testimony of the witnesses covers the enameling of all classes of articles; and, in connection with the motion made at the hearing below for an enlargement of time to take more testimony, we offered to prove by workmen from all the factories of the licensees the same facts as are shown by the witnesses examined, if the Court would grant us an opportunity to take further testimony.

Mr. Bentley pointed out that the Arrott invention is essentially different from the hand dredge, not only in point of novelty (to which we are not addressing ourselves), but as to the manner in which it operates to distribute the enameling powder upon the article to be enameled (v. III., p. 357).

In the hand dredge there is simply a series of intermittent blows which dislodge the enameling powder and cause it to flow through the sieve in puffs, lumps, clots, streaks, etc. (v. III., pp. 7, 111, 146, 148, 166, 176, 357; Defendant's Exhibits Nos. 6, 8, 9), by reason of the impact of the beater against the body of the sieve itself. The Arrott dredger causes a molecular transmission of the blows of the agitator through the handle, which sets the wires of the sieve into a continuous vibration, which dislodge the minute particles of the enameling powder lying upon the sieve and causes them to flow through the meshes of the sieve in a steady stream, this action being uniform throughout the entire mesh of the sieve (v. III., p. 357). The practical difference is that with the Arrott dredger there is a continuous and uniform fall of the powdered enamel from the dredger, in distinction from the intermittent and non-uniform delivery of the enamel by the hand dredge (v. III., pp. 109, 110, 111, 148, 150, 179, 181, 184, 185, 188, 193, 227, 240, 247, 330, 336, 357, 384, 399, 404, 406, 410).

By the use of the Arrott dredger the following advantages over the hand dredger are secured: It is possible to use a lighter casting (v. III., pp. 116, 296); less enameling powder is

used (v. III., pp. 34, 292); the enameling can be done more quickly (v. III., pp. 11, 109, 151, 154, 165, 166, 174); more articles can be enameled in the same time, and thereby a saving in the use of the furnace effected; the enameling can be done with less effort on the part of the workmen, former methods having been described by the workmen as "mankillers" (v. III., pp. 118, 153); there are less rejections (v. III., pp. 32, 109, 174, 176), though the standard required is higher (v. III., pp. 150, 176), many workmen having had no rejections over a considerable period and the average percentage of rejections being not in excess of about 1 or 1½ per cent. (v. III., pp. 36, 79, 92) whereas formerly, by the methods in use prior to the introduction of the Arrott invention, the rejections were on an average about 10 per cent. (v. III., p. 34), and workmen testified that sometimes a whole day's work was rejected and that this was not an unusual occurrence; more money is made by the workmen in less time at less price per piece, and with less effort (v. III., pp. 11, 14, 109, 110, 151, 152, 167, 171, 175, 205, 229, 241, 331); only men of unusual nervous and physical endurance and of good mechanical judgment could be taught, and then with difficulty, to use the method in use before the introduction of the Arrott invention (v. III., pp. 111, 147, 148, 295), whereas with the Arrott invention almost any man can learn in a short time to use it successfully (v. III., pp. 111, 112, 155, 167, 176).

To make high grade, durable and sanitary enameled ware it is necessary that the enamel should be hard, white, lustrous, thin, even and smooth, and not porous.

The testimeny is uniform that this result can only be accomplished commercially by the use of the Arrott dredger.

Finally, the testimony is uniform that as a result of the use of the Arrott dredger ware so much better as to require a new classification is commercially made, more of it in the same length of time and at less cost to the manufacturer, at greater profit to the workmen, at less labor to the workman, and the public gets, in addition thereto, an honest article.

Throughout the testimony of the workmen percentages of savings and of advantages due to the Arrott dredger appear. These are, however, perhaps as well stated as possible in the testimony of Professor Staley, where he discusses: The saving in enamel (v. III, p. 293); the saving in the number of the

crew (v. III, p. 293); the introduction of mechanical appliances not available by the old method (v. III, p. 293); the saving in labor (v. III, p. 293); the saving in time (v. III, p. 293); the saving in plant (v. III, p. 294); the saving in cost of superintendence (v. III, pp. 294, 295, 296); the saving in the trouble and expense of maintaining output (v. III, pp. 295, 296); the saving in the weight of castings (v. III, p. 296); the saving in the use of the furnace (v. III, p. 296); the employment of less skilled labor, consequently less highly paid (v. III, p. 297); the production of better quality ware (v. III, pp. 298, 299); the avoidance of defects (v. III, pp. 298, 299); the preventing of returns of defective ware by dissatisfied customers (v. III, p. 300); the improvement in the quality of the enamel itself (v. III, p. 301), thus rendering it less sensitive to wear and less sensitive to the attack of chemical agencies (v. III, p. 301); and the impossibility of commercially manufacturing Sanitary Enameled Iron Ware without the use of the Arrott dredger (v. III, pp. 301, 302).

A number of employes of the various manufacturers, each one of whom had had practical experience in enameling with both the hand dredges and the Arrott dredger, testified in the case.

The testimony of George Shield, general foreman of the enameling department of the Dawes-Myler Works of the Standard Sanitary Manufacturing Company, at New Brighton, Pennsylvania, who went to work for them in June, 1888, and who had very great experience in the actual work of enameling, appears in Volume III., at pages 1 to 104;

That of John S. Jobe, general superintendent of the National Sanitary Manufacturing Company, who had been in the business about seventeen years, and had a very successful career as an enameler, appears in Volume III., at pages 105 to 142;

That of John J. Mitchell, foreman of the enameling department of the J. L. Mott Iron Works, Trenton, New Jersey, who had fifteen years' experience, appears in Volume III., at pages 143 to 163;

That of Michael J. O'Brien, night foreman in the enameling department of the J. L. Mott Iron Works, at Trenton, New Jersey, who had been an enameler for about twelve years, appears in Volume III., at pages 163 to 171;

That of Patrick Mooney, who had been with the J. L. Mott Iron Works for about twenty-three years, and as an enameler for about twelve years, appears in Volume III., at pages 172 to 179;

That of Anthony Barry, who has been engaged for about seven years in the enameling department of the J. L. Mott Iron Works, at Trenton, New Jersey, appears in Volume III., at pages 179 to 182;

That of Charles A. Fisher, foreman in the works of A. Weiskittel & Sons Company, at Baltimore, Maryland, appears in Volume III., at pages 183 to 223, and 254 to 258;

That of Herman O. Goldsmith, who had been employed by A. Weiskittel & Sons Company for about nine years, during four or five of which he had been enameling, appears in Volume III., at pages 223 to 237;

That of Joseph B. LeBrun, who was employed as an enameler of bath tubs by A. Weiskittel & Sons Company, appears in Volume III., at pages 238 to 244;

That of William Bodine, who had been employed about nine years by A. Weiskittel & Sons Company as an enameler of bath tubs, appears in Volume III., at pages 244 to 252;

That of George J. Blackham, manager of the McCrum-Howell Company, who had been in the enameling business from the time he commenced work, about eighteen years ago, appears in Volume III., at pages 329 to 334;

That of Charles E. Wilkinson, enameling foreman for the McCrum-Howell Company, at Uniontown, Pennsylvania, who had been in the business about six years, appears in Volume III., at pages 335 to 340;

That of Andrew Ramming, foreman of the small ware enameling department of the Standard Sanitary Manufacturing Company, in Allegheny, Pennsylvania, who had been an enameler for eighteen years, appears in Volume III., at pages 408 to 411;

That of Joseph Varley, enameling foreman of the Humphryes Manufacturing Company, who had been enameling since about the time the Dawes-Myler plant was started in 1887, appears in Volume III., at pages 395 to 408; and

That of John C. Reed, manager of the Allegheny works of the Standard Sanitary Manufacturing Company since 1893,

and who was thoroughly familiar with the art of enameling, appears in Volume III., at pages 379 to 394.

All of the foregoing witnesses agree in testifying to the facts above stated. The great value of the Arrott invention is incontestably established.

Resumé.

From the foregoing and the cases cited it is evident that the majority of the Court below over-looked the distinction pointed out by this Court in *Henry vs. Dick*, *supra*, between the property in the material composing the patented article and the right to use the invention covered by the patent.

In the case at bar the defendant Wayman, the Licensor, did not even dispose of the material; he merely granted the right to use the intangible thing—the invention—reduced by the licensees to tangible form and used in the manufacture of their product under certain restrictions as to the disposal of the product, which restrictions the cases hold to be entirely within his right.

The Court below got into the confusion of dealing with the material thing covered by Letters Patent as though it were the invention. The object of the patent laws, passed under the constitutional grant, is to protect the inventor in his idea, in his discovery. His discovery is protected by the Letters Patent and by the patent laws. It is not subject in any way to the Sherman Anti-Trust law. His discovery may take tangible form either in the article manufactured, which is called a patented article, or in the result produced by a process, or in a article produced by the use of the patented article. Any of these material forms may be subject to the laws passed under the police power of the states, as in *Patterson vs. Kentucky*, 97 U. S., 501, and like cases, or the provisions of the Sherman Anti-Trust law when or as soon as he has released them from the monopoly of his patent.

The reason for prohibiting by injunction the manufacture of a patented article, is to protect the inventor in his discovery. The material thing itself is not the invention, but to prevent others from manufacturing that material thing may be the only way of protecting the inventor in his discovery. The owner of Letters Patent covering a process is protected

in his discovery of the process by enjoining a stranger from obtaining the result which may be an unpatented material thing by use of the discovery involved in the process. The inhibition may apply to the material thing which the infringer is making, but the object sought to be, and attained is the protection of the use of the process itself, not the prohibition of the manufacture of the material thing.

Similarly, a patented machine might be the only commercially practical way of manufacturing a particular thing. The thing is unpatented and the result in such a case of prohibiting the making, using or selling of the thing made by the use of the patented machine is to protect the inventor in his discovery. So, here, the only method the owner of the Letters Patent had to protect the use of his invention was by saying to those desiring to use it and those desiring to purchase the product of its use, "you may not have it except upon such terms as I impose," which terms were reasonably designed to that end.

The suggestion that in this way the owner of the inventions extends his monopoly to unpatented articles is totally unsound. The enameled ware is unpatented and may be sold and dealt in freely if manufactured without the use of the invention covered by the Letters Patent in question. The public has no right to enameled ware, however, manufactured by the use of the Arrott invention.

Under the principle of the *Paper Bag Patent Case*, the owner of the Letters Patent here might have permitted the use of his invention for the purpose of manufacturing sanitary enameled iron ware upon condition that it should not be sold at all, and consequently that it might be sold upon prescribed conditions.

The defendant Wayman's right to make the agreements is amply established by the cases, that he brought about the making of them for his own benefit and to make money is clear from the evidence, that the defendants may have gone into them because they created conditions which they themselves desired in the enameled ware trade is immaterial, and the value of invention is incontestably proved.

It is submitted that the agreements are legal patent agreements and not subject to the Sherman Anti-Trust Act.

II.

THE COURT BELOW ERRED IN NOT DECREEING THAT THE AGREEMENTS ENTERED INTO BY THE DEFENDANTS, AND UPON WHICH THE PETITION IS BASED, WERE NOT IN RESTRAINT OF INTERSTATE TRADE AND COMMERCE AND NOT IN VIOLATION OF THE SHERMAN ANTI-TRUST ACT, AND THAT THE USE OF THE PATENTS WAS NOT A SUBTERFUGE.

The Sherman Act.

The acts alleged in the petition so far as the evidence in the case tends to establish them do not violate the provisions of the Sherman Act.

The agreements in the case at bar are not within the Sherman Act. The agreements were purely economic arrangements for the purpose of manufacturing and distributing economically and systematically in strict and normal compliance with modern trade progress sanitary enameled iron ware (*United States vs. Winslow*, 195 F., 578, 592).

They were open upon the same terms to all who chose to take advantage of them (v. IV., p. 173; *United States vs. Terminal R. R. Association*, 224 U. S., 383, 398, 410).

They were, moreover, based upon patents which created a true monopoly, a grant from the sovereign—the Constitution—so that to hold that this monopoly was violative of the Sherman Act would be judicial legislation and an attack upon the whole patent system (*Henry us. A. B. Dick Co.*, 224 U. S., 16, 27, 35).

Consequently, it has been held that the Sherman Act and the patent laws were passed under separate grants of constitutional power and do not affect each other (*Bement vs. National Harrow Co..*, 186 U. S., 70, 91; *Rubber Tire Wheel Co. vs. Milwaukee R. W. Co.*, 154 F., 358, 362).

To bring an agreement relating to a patent within the scope of the Sherman Act it must undertake to extend the monopoly to "unpatented territory;" that is, for instance, where a patentee has made the patented article according to the invention covered by the patent and disposes of said article unconditionally, to attempt then to impose restrictions upon the disposal of such article. That is not attempted in

this case, nor is it claimed that any such thing was attempted.

As said in one of the cases, to which reference is made herein, the Sherman Act relates only to contracts or combinations with reference to articles in which the people are entitled to freedom of trade or instrumentalities of commerce between which the people are entitled to free competition; and, according to the decided cases, a combination is legal between private persons, associations and corporations not owing a public duty or dealing in the necessaries of life, who are actually or potentially competitors, provided such combination is made to foster the business of those combining and the conditions upon which the combination is based are fairly and reasonably adapted to carry out the aforesaid purpose, and no effort is made to coerce or injure those not in the combination.

The true construction of the so-called anti-Trust Act and one that is not in conflict with any of the decisions is that it does not condemn a fair and reasonable attempt to avoid loss by means of trade agreements which are intended to prevent nothing but the cutting of rates below the reasonable expense of production and reasonable profit thereon; nor is the monopolization referred to in said anti-Trust Act simply the complete occupation of a certain field if that occupation may be fairly accomplished (*Fonotipia, Ltd., vs. Bradley*, 171 F., 951, 959).

The statement in *United States vs. Trans-Missouri Freight Ass'n*, 166 U. S., 290, that the Act applied whether the contract was reasonable or unreasonable, and which is largely responsible for the uncertainty which has prevailed as to the true construction of the Act was, as pointed out in *United States vs. Winslow*, 195 F., 578, 587, Reporter's law being contained in the head note.

History of the Act.

The Sherman anti-Trust Act was originally introduced on August 14, 1888, in the first session of the 50th Congress by Senator Sherman as S. 3445.

As then drawn, it was directed against all "arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view, or which tend, to prevent full and free competition

in the production, manufacture, or sale of articles of domestic growth or production, or of the sale of articles imported into the United States, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend, to advance the cost to the consumer of any such articles."

It was reintroduced December 4, 1889, in the first session of the 51st Congress in substantially the same form, and in this form was the subject of extensive debate, most of the leading Senators taking part and most, while in favor of the general purpose to prevent combinations in interstate trade harmful to the public, opposing the bill in its specific form.

The author himself on March 21, 1890 (21 Cong. Rec., p. 2456) declares of the bill:

> "It does not announce a new principle of law, but applies old and well-recognized principles of common law to the complicated jurisdiction of our State and Federal Government. Similar contracts in any State in the Union are now, by common or statute law, null and void. Each State can and does prevent and control combinations within the limit of the State."

And (p. 2457):

> "This bill does not seek to cripple combinations of capital and labor, the formation of partnerships or of corporations, but only to prevent and control combinations made with a view to prevent competition, or for the restraint of trade, or to increase the profits of the producer at the cost of the consumer. It is the unlawful combination, tested by the rules of common law and human experience, that is aimed at by this bill, and not the useful and lawful combination. * * * If their business is lawful they can combine in any way to enjoy the advantage of their united skill and capital, provided they do not combine to prevent competition."

And (p. 2460):

> "I admit that it is difficult to define in legal language the precise line between lawful and unlawful

combinations. This must be left to the courts to determine in each particular case. All that we, as lawmakers, can do is to declare general principles, and we can be assured that the courts will apply them so as to carry out the meaning of the law, as the courts of England and the United States have done for centuries."

And (p. 2562):

"The bill as reported contains three or four simple propositions which relate only to contracts, combinations, agreements made with a view and designed to carry out a certain purpose, which the laws of all the States and of every civilized community declare to be unlawful."

Senator Platt, of Connecticut, than whom there was no more conservative, wiser or experienced man then in the Senate, said of this bill (p. 2730):

"I do not like to vote against this bill. I believe that there are combinations in this country which are criminal, but I believe that every man in business * * * has a right * * * to obtain a fair profit upon his business and his work; and if he is driven by fierce competition to a spot where his business is unremunerative, I believe it is his right to combine for the purpose of raising prices until they shall be fair and remunerative. * * * I do not believe there is in this country among any class of people a real desire that anybody shall do business without receiving a fair profit, * * * and I do not believe that there is any class of people in this country who, when they face this false assumption that cheap prices are the great, beneficent thing for the country and think of it, will agree to that proposition. Whenever the price of anything is below what it costs to produce it, it ought to be raised, and any combination for the purpose of raising it to a point where the price is fair and reasonable ought not to be condemned; it ought to be encouraged. * * * there is no greater fallacy than that the cheaper prices are, the better it is

> for the community. It is not true. * * * The theory of this bill is that prices must never be advanced by any two or more persons, no matter how ruinously low they may be. That theory I denounce as utterly untenable, as immoral. * * *."

These observations were made of the bill in its original form; they apply with greater force to the bill as finally reported by the Committee, and passed.

Senator Hoar (p. 3152) said that the word "monopoly" as used in the bill meant:

> "* * * the sole engrossing to a man's self by means which prevent other men from engaging in fair competition with him."

And, when asked why if the common law denounced such a monopoly it was necessary to include it in the bill, said:

> "Because there is not any common law of the United States. * * * Now, we are dealing with an offense against interstate or international commerce, which the State cannot regulate by penal enactment, and we find the United States without any common law. The great thing that this bill does, except affording a remedy, is to extend the common law principles, which protected fair competition in trade in old times in England, to international and interstate commerce in the United States."

In *United Shoe Machinery Co. vs. Euclid L. La Chapelle*, published in the July 20, 1912, issue of the "Banker and Tradesman," a Boston paper, and not elsewhere reported, the court said the decision in the *Standard Oil Case*, as we understand it, holds that the test to determine whether or not a given contract or combination is in restraint of interstate trade and commerce is the standard of reason as applied to like contracts at common law.

"Statutes are not to be interpreted to change the common law except so far as a purpose so to do is necessarily implied" (*United States vs. Winslow*, 195 F., 578, 587, 588; *Northern Securities Case*, 193 U. S., 197, 361; Standard Oil Case, 221 U. S., 51, 59, 60).

While the expressions of opinion during debate upon a bill are not evidence by which the bill is to be construed, still the fact that a bill contains a provision with reference to competition and is then enacted leaving out all reference to competition and using phrases which had an ascertained meaning at the time of the enactment of the bill, does bear very materially upon the construction to be given to the act (*United States vs. E. L. Du Pont DeNemours & Co.*, 188 F., 127, 150).

Construction of the Act.

In *Standard Oil Co. of New Jersey vs. United States*, 221 U. S., 1, the Chief Justice said (p. 58), in an opinion which was only dissented from by Mr. Justice HARLAN, that the common law had come to treat as illegal

> "All contracts or acts which were unreasonably restrictive of competitive conditions either from the nature or character of the contract or act, or where the surrounding circumstances were such as to justify the conclusion that they had not been entered into or performed with the legitimate purpose of reasonably forwarding personal interest and developing trade, but on the contrary were of such a character as to give rise to the inferance or presumption that they had been entered into or done with the intent to do wrong to the general public and to limit the right of individuals, thus restraining the free flow of commerce and tending to bring about the evils, such as enhancement of prices which were considered to be against public policy;"

and that consequently (p. 59):

> "* * * the context manifests that the statute (the Sherman Act) was drawn in the light of the existing practical conception of the law of restraint of trade, because it groups as within that class, not only contracts which were in restraint of trade in the subjective sense, but all contracts or acts which theoretically were attempts to monopolize, yet which in practice had come to be considered as in restraint of trade in a broad sense."

But that (p. 59) :

> " In view of the many new forms of contracts and combinations which were being evolved from existing economic condition, it was deemed essential by an all-embracing enumeration to make sure that no form of contract or combination by which an undue restraint of interstate or foreign commerce was brought about could save such restraint from condemnation ;"

and that the words " to monopolize " and " monopolize " meant the monopoly defined by Senator Hoar, that is, " The sole engrossing to a man's self by means which prevent other men from engaging in fair competition with him ;" or, in other words, " monopoly and the acts which produce the same result as monopoly, that is, an undue restraint of the course of trade," which, in the course of the evolution before referred to in the opinion, " all came to be spoken of as and to be synonymous with restraint of trade."

And he concluded (p. 60) :

> " It follows that it was intended that the standard of reason which had been applied at the common law and in this country in dealing with subjects of the character embraced by the statute was intended to be the measure used for the purpose of determining whether in a given case a particular act had or had not brought about the wrong against which the statute provided."

The Sherman Act has no application, because the agreements were an economic arrangement to meet the demands of the market.

The Sherman Act applies only to such things as unreasonably restrain trade to the injury of the public, but does not apply to such things as are entered into for the purpose of reasonably forwarding the personal interests of the parties and developing their trade, though there may be an incidental restraint of trade.

The agreements in the case at bar are not within the Sherman Act, because their dominant purpose was to promote the trade of the parties, and there are in the agreements and in

the acts under them none of the elements pointed out in the Standard Oil case and the Tobacco case as objectionable, as

(*a*) Enhancement of prices.
(*b*) Limitation of output.
(*c*) Deterioration of quality.
(*d*) Intimidation, coercion, or fraud.

On the contrary, in the agreements in the case at bar and the acts under them, the prices were not enhanced, there was no limitation of output, there was a great improvement in quality, and there was no intimidation, coercion or fraud.

As stated by the Chief Justice in the *Standard Oil Case* (p. 78): "One of the fundamental purposes of the Statute, is to protect, not to destroy, rights of property."

And he says further (p. 78): "Injury to the public by the prevention of an undue restraint on, or the monopolization of, trade or commerce is the foundation upon which the prohibitions of the Statute rest."

Every case must be determined upon its own facts and it can safely be "left to the judiciary to decide whether in a given case particular acts come within a generic statutory provision" (p. 69), such as Sections 1 and 2 of the Sherman Act.

In the opinion it is stated (p. 63) that:

> "Judgment must in every case be called into play in order to determine whether a particular act is embraced within the statutory classes, and whether, if the act is within such classes, its nature or effect causes it to be a restraint of trade within the intendment of the Act."

The Court says in the same case (p. 52):

> "The evils which led to the public outcry against monopolies and to the final denial of the power to make them may be thus summarily stated: 1. The power which the monopoly gave to the one who enjoyed it to fix the price and thereby injure the public; 2. The power which it engendered of enabling a limitation on pro-

duction; and, 3. The danger of deterioration in quality of the monopolized article which it was deemed was the inevitable resultant of the monopolistic control over its production and sale."

And (p. 55):

"at common law the evils consequent upon engrossing, etc., caused those things to be treated as coming within monopoly and sometimes to be called monopoly and the same considerations caused monopoly because of its operation and effect, to be brought within and spoken of generally as impeding the due course of or being in restraint of trade."

The Court then said (p. 58):

"that the dread of enhancement of prices and of other wrongs which it was thought would flow from the undue limitation on competitive conditions caused by contracts or other acts of individuals or corporations, led, as a matter of public policy, to the prohibition or treating as illegal all contracts or acts which were *unreasonably* restrictive of competitive conditions, either from the nature or character of the contract or act or where the surrounding circumstances were such as to justify the conclusion that they had not been entered into or performed with the legitimate purpose of reasonably forwarding personal interest and *developing* trade, but on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done with the intent to do wrong to the general public and to limit the right of individuals, thus restraining the free flow of commerce and tending to bring about the evils, such as *enhancement* of prices, which were considered to be against public policy." (Italics ours.)

Restraint is often mere regulation, or temporary obstruction, for the purpose of clearing out the channel and letting the stream flow at full tide (*United States vs. Winslow*, 195 Fed., 578, 586).

Construing the Sherman Act in *U. S. vs. E. I. DuPont DeNemours & Co.*, 188 F., 127, the Court said (pp. 150, 151):

"A number of bills were introduced in the Fiftieth Congress (in August and September, 1888) designed to make unlawful every combination 'to prevent competition' and 'to prevent full and free competition' in the sales of articles transported from one state to another. None of them was enacted into law. On December 4, 1889, Mr. Sherman introduced into the Senate of the Fifty-first Congress a bill which declared unlawful every combination 'to prevent full and free competition' in such sales. After much debate the bill was, on March 27, 1890, referred to the committee on judiciary, and on April 2, 1890, that committee reported it back to the Senate with an amendment, drawn by the late Senator Hoar, striking out all after its enacting clause and substituting therefor the act as we now have it. As enacted, it does not condemn every combination 'to prevent competition.' What it condemns is every combination in restraint of trade or commerce among the several states, etc. When the bill went from the Senate to the House, the latter body amended it by inserting a provision extending the scope of the act to all agreements entered into for the purpose of 'preventing competition' either in the purchase or sale of commodities; but the amendment was disagreed to. While there is a 'general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body' (*United States v. Freight Association*, 166 U. S., 318 * * *), that rule 'in the nature of things is not violated by resorting to debates as a means of ascertaining the environment at the time of the enactment of a particular law; that is, the history of the period when it was adopted' (*Standard Oil Co. v. United States*, 221 U. S., 50 * * *).

"There is a distinction between restraint of competition and restraint of trade. The latter expression had, when the anti-trust act was passed, a definite legal

signification. Not every combination in restraint of competition was, in a legal sense, in restraint of trade. Two men in the same town engaged in the same business as competitors may unite in a copartnership, and thereafter, as between themselves, substitute co-operation for competition. Their combination restrains competition, and if their town is located near the line between two states, and each has been trading in both states, their combination restrains competition in interstate trade. But it does not necessarily follow that such restraint of competition is a restraint of interstate trade and commerce. The determination of whether it be so must depend upon the facts and circumstances of each individual case. It is undoubtedly the policy of the statute that competitive conditions in interstate trade should be maintained wherever their abolition would tend to suppress or diminish such trade. But this being true does not read into the statute a denunciation of all agreements that may restrain competition without regard to their purpose or direct effect to restrain 'trade or commerce among the several states.' To what extent the anti-trust act condemns combinations that restrain full and free competition in interstate trade is a question that has been much debated. For a dozen years, at least, it has been settled that it does not condemn combinations which only indirectly, remotely, or incidentally restrain interstate trade.

"The recent decisions of the Supreme Court in *Standard Oil Co. vs. United States*, and *American Tobacco Co. vs. United States*, 221 U. S., 106, * * * make it quite clear that the language of the anti-trust act is not to receive that literal construction which will impair rather than enhance freedom of interstate commerce. As we read those decisions, restraint of interstate trade and restraint of competition in interstate trade are not interchangeable expressions. There may be, under the anti-trust act, restraint of competition that does not amount to restraint of interstate trade, just as before the passage of the act there might have been restraint of competition that did not amount to a common-law

restraint of trade. This fact was plainly recognized in *United States vs. Joint Traffic Association*, 171 U. S., 505, 567, * * * where Mr. Justice PECKHAM said:

> "We might say that the formation of corporations for business or manufacturing purposes has never, to our knowledge, been regarded in the nature of a contract in restraint of trade or commerce. The same may be said of the contract of partnership. It might also be difficult to show that the appointment by two or more producers of the same person to sell their goods on commission was a matter in any degree in restraint of trade. We are not aware that it has ever been claimed that a lease or purchase by a farmer, a manufacturer, or merchant of an additional farm, manufactory, or shop, or the withdrawal from business of any farmer, merchant, or manufacturer, restrained commerce or trade within the legal definition of that term."
>
> "While all this is true, the recent decisions of the Supreme Court make it equally clear that a combination cannot escape the condemnation of the anti-trust act merely by the form it assumes or by the dress it wears. It matters not whether the combination be 'in the form of a trust or otherwise,' whether it be in the form of a trade association or a corporation, if it arbitrarily uses its power to force weaker competitors out of business, or to coerce them into a sale to or union with the combination, it puts a restraint upon interstate commerce, and monopolizes or attempts to monopolize a part of that commerce, in a sense that violates the anti-trust act."

In *United States vs. John Reardon & Sons Co.*, 191 Fed., 454, indictments were brought against certain persons for violation of the provisions of the Sherman Anti-Trust Act, and upon demurrer to the indictments the Court (PUTNAM, C. J.), said (p. 458):

> "* * * Regulation of trade is not restraint of trade. On the other hand, regulation of trade may be

the very thing which secures freedom of trade. There are plenty of illustrations. Take, for instance, the great lines running Atlantic steamers into Boston. While they are running their steamers in here, they find there is a lack of outward freight while there is a surplus of outward freight at New York, and they combine among themselves to regulate the sailing of their steamers, so as to give more steamers at New York and fewer at Boston. That is a regulation. Did anybody ever suppose that that was restraint of trade in any proper sense of the word. In my own state the most singular illustration is to be found where there was a congeries of small railroads, and all of them consolidated by state action into a single great trunk line, an act which, as many people have construed the Sherman act, would be absolutely illegal. It is admitted beyond all question that that single line does the work of the state to the entire satisfaction of the state in a way that those smaller lines could not possibly do it.

"Therefore something more than mere regulation is necessary, particularly as the indictment does not show whether or not by regulation they cut down prices or enhanced them, or had any power to divide up the territory so as to obtain a monopoly of any part thereof. All the cases where there has been a regulating found by the Supreme Court to be illegal, or a division of territory, there has been a practical monopoly in certain directions resulting therefrom, or the common case where parties agreed under a penalty to divide up, generally condemned by the Supreme Court, and by all the courts."

In *United States vs. Terminal R. R. Assn. of St. Louis*, 224 U. S., 383, the Terminal Company had acquired control of substantially all the means of entrance into St. Louis by railroads from either the East or the West.

The Court held that if the Terminal Company had admitted any railroad wishing to enter St. Louis upon equal terms with any other, it would have been an unobjectionable combination; but since it required the unanimous consent of its members, any one of them having the veto power, to the

admission of a railroad company, it, on account of the topography of the country about St. Louis, operated to restrain interstate commerce, saying (pp. 394, 395):

> "We come, then, to the question upon which the case must turn: Has the unification of substantially every terminal facility by which the traffic of St. Louis is served resulted in a combination which is in restraint of trade within the meaning and purpose of the Anti-Trust Act?
>
> "It is not contended that the unification of the terminal facilities of a great city where many railroad systems center is, under all circumstances and conditions, a combination in restraint of trade or commerce. Whether it is a facility in aid of interstate commerce or an unreasonable restraint forbidden by the act of Congress, as construed and applied by this court in the cases of *The Standard Oil Company v. The United States*, 221 U. S., 1, and *The United States v. American Tobacco Company*, 221 U. S., 106, will depend upon the intent to be inferred from the extent of the control thereby secured over instrumentalities which such commerce is under compulsion to use, the method by which such control has been brought about and the manner in which that control has been exerted * * * (p. 410). Plainly the combination which has occurred would not be an illegal restraint under the terms of the statute if it were what is claimed for it, a proper terminal association acting as the impartial agent of every line which is under compulsion to use its instrumentalities."

In the case at bar the testimony is that all manufacturers were offered and any could secure a similar license agreement, and Mr. Wayman testified that he did not refuse any one similar privileges upon equal terms (v. IV., p. 173); and it was to Mr. Wayman's pecuniary and selfish interest to grant licenses to as many as possible.

Mogul S. S. Co. vs. McGregor, decided July 13, 1889 by the Queen's Bench Division (23 Q. B. D., 598), and affirmed

by the House of Lords, December 18, 1891, A. C. (1892) 25, is cited in the Standard Oil case as clearly showing "the scope and effect of this freedom to trade and contract."

In that case an association of ship owners entered into an agreement in order to secure the trade exclusively for themselves at profitable rates, to regulate the number of ships to be sent by the association to the loading ports, the division of cargoes, and the freights to be demanded, that a rebate of 5% on the freights should be allowed to all shippers who shipped only with members of the association, that agents of members should be prohibited, on pain of dismissal, from acting in the interest of competing ship-owners, that shippers who shipped by ships owned by persons not members of the association should forfeit their total rebates, and that in case persons not members of the association send ships to the loading port the association would send sufficient ships to underbid such outsiders and reduce the freights below a remunerative rate, which latter course was actually adopted with regard to the appellants.

In affirming the decision of the Court below the House of Lords (Lord WATSON) said (p. 42):

> "There is nothing in the evidence to suggest that the parties to the agreement had any other object in view than that of defending their carrying-trade during the tea season against the encroachments of the appellants and other competitors, and of attracting to themselves custom which might otherwise have been carried off by these competitors. That is an object which is strenuously pursued by merchants great and small in every branch of commerce; and it is, in the eyes of the law, perfectly legitimate. If the respondents' combination had been formed, not with a single view to the extension of their business and the increase of its profits, but with the main or ulterior design of effecting an unlawful object, a very different question would have arisen for the consideration of your Lordships. But no such case is presented by the facts disclosed in this appeal."

And Lord HALSBURY, L. C., said (p. 37):

> "I entirely adopt and make my own what was said by Lord Justice BOWEN in the Court below:
>
> "'All commercial men with capital are acquainted with the ordinary expedient of sowing one year a crop of apparently unfruitful prices, in order by driving competition away to reap a fuller harvest of profit in the future; and until the present argument at the Bar it may be doubted whether shipowners or merchants were ever deemed to be bound by law to conform to some imaginary 'normal' standard of freights or prices, or that law courts had a right to say to them in respect of their competitive tariffs, 'Thus far shalt thou go, and no further.'"

The statement in one of the cases (*United States vs. Freight Association*, 166 U. S., 290, 327), that the Sherman Act does more than apply the common law to the United States Courts, is explained by the Chief Justice in the reference to "the many new forms of contracts and combinations which were being evolved from existing economic conditions"; and he recognizes in the statement "it is undoubted that in the opinion in the case general language was made use of which when separated from its context would justify the conclusion that it was decided that reason could not be resorted to for the purpose of determining whether the acts complained of were within the statute," that in every case the decision is limited by the facts upon which the Court is called to pass.

In *Hopkins vs. United States*, 171 U. S., 578, decided intermediate the decisions of the *Freight Association Case* (166 U. S., 290) and the *Joint Traffic Case* (171 U. S., 505), Mr. Justice PECKHAM, who wrote the opinions in all three cases, said (p. 592):

> "To treat as condemned by the act all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased would enlarge the application of the act far beyond the fair meaning of the language used. There must be some

direct and immediate effect upon interstate commerce in order to come within the act."

And in the *Joint Traffic Case, supra,* the Court said (p. 567) :

> " We might say that the formation of corporations for business or manufacturing purposes has never, to our knowledge, been regarded in the nature of a contract in restraint of trade or commerce. The same may be said of the contract of partnership. It might also be difficult to show that the appointment by two or more producers of the same person to sell their goods on commission was a matter in any degree in restraint of trade.
>
> " We are not aware that it has ever been claimed that a lease or purchase by a farmer, manufacturer or merchant of an additional farm, manufactory or shop, or the withdrawal from business of any farmer, merchant or manufacturer, restrained commerce or trade within any legal definition of that term ; and the sale of a good will of a business with an accompanying agreement not to engage in a similar business was instanced in the *Trans-Missouri case* as a contract not within the meaning of the act ; and it was said that such a contract was collateral to the main contract of sale, and was entered into for the purpose of enhancing the price at which the vendor sells his business."

Following the same line and anticipating the decision of the *Standard Oil Case,* Judge CHATFIELD, in *Fonotipia Limited vs. Bradley,* 171 F., 951, said (p. 959) :

> " If the patents be disregarded, and the matter be considered as a purely business arrangement, it is impossible to see where any offense against the statute mentioned has been shown. Restriction of competition may not *(sic)* include a fair and reasonable attempt to avoid loss by trade agreements which are aimed to prevent nothing but the cutting of rates below the reasonable

> expense of production and reasonable profit thereon; nor is a 'monopoly' in the sense meant by the statute, merely the complete occupation of a certain field where that occupation does not unfairly exclude other competitors. * * * A certain intent and certain motives, which need not be discussed at length, must be present to establish the interference with competition and the existence of the monopoly at which the statute above mentioned was aimed and which is included within its provisions. A mere attempt to obtain a fair profit, even by an agreement not to under sell, must be tested by the measure of what would be a fair price under competition, and it must be determined whether the centralization or control of the output is intended to or does accomplish any interference with the free action of independent parties who might compete, or with the securing to the public of all the benefits to which they are entitled over and above the reasonable cost of production and reasonable profit."

In *United States vs. American Tobacco Co.*, 221 U. S., 106, the Supreme Court found that the defendants had pursued a consistent course of acquiring concerns connected with the tobacco industry, taking from those connected with the concerns acquired covenants not to compete with the American Tobacco Company and its allied companies, and in many cases immediately closing the plants, and that the evident purpose of the course adopted was to secure control by unfair means of the tobacco industry, and that consequently the defendants were guilty of a violation of the Sherman Anti-Trust Act. The Court reaffirms the decision in the *Standard Oil Case*, and says that it was held in that case (p. 179)

> "* * * that as the words "restraint of trade" at common law and in the law of this country at the time of the adoption of the Anti-trust Act only embraced acts or contracts or agreements or combinations which operated to the prejudice of the public interests by unduly restricting competition or unduly obstructing the due course of trade or which, either because of

> their inherent nature or effect or because of the evident purpose of the acts, etc., injuriously restrained trade, that the words as used in the statute were designed to have and did have but a like significance. It was therefore pointed out that the statute did not forbid or restrain the power to make normal and usual contracts to further trade by resorting to all normal methods, whether by agreement or otherwise, to accomplish such purpose;"

and after saying that the statute was to be construed broadly so as to effect its purpose and bring within its terms everything within the spirit of the act, and not only what was within the letter, the opinion says (p. 181):

> "The history of the combination '(the defendants)' is so replete with the doing of acts which it was the obvious purpose of the statute to forbid, so demonstrative of the existence from the beginning of a purpose to acquire dominion and control of the tobacco trade, not by the mere exertion of the ordinary right to contract and to trade, but by methods devised in order to monopolize the trade by driving competitors out of business which were ruthlessly carried out upon the assumption that to work upon the fears or play upon the cupidity of competitors would make success possible. We say these conclusions are inevitable, not because of the vast amount of property aggregated by the combination, not because alone of the many corporations which the proof shows were united by resort to one device or another. Again, not alone because of the dominion and control over the tobacco trade which actually exists, but because we think the conclusion of wrongful purpose and illegal combination is overwhelmingly established."

None of these things appears in the case at bar.

As stated in both the *Standard Oil Case* and the *Tobacco Case*, those decisions are "in accord with all the previous decisions of the Court," as will appear from a careful examina-

tion of the other decisions in connection with the facts of each case which were before the Court.

In *United States vs. E. C. Knight Co.*, 156 U. S., 1, the purchase of the stock of four Philadelphia refineries with shares of its own stock by the American Sugar Refining Company was held not to be within the act, because the transaction related exclusively to the acquisition of the Philadelphia refineries and the business of sugar refining in Philadelphia, and bore no direct relation to interstate or foreign commerce.

In *Bigelow vs. Calumet & Hecla Mining Co.*, 167 F., 721, the procuring of control by the Calumet & Hecla Mining Company of a competing mining company was held not to be within the act, the Court saying (p. 729):

> "I am convinced from a careful consideration of the testimony, that the controlling motive and purpose of the Calumet & Hecla Company in acquiring its interest in the mining properties mentioned was to extend its industrial life, and keep up and increase, if possible, its production and net earnings, and that the evidence fairly negatives a design thereby to reduce the output of any of the companies or artificially to increase or maintain the price of the product, or to stifle competition between the related companies, or to prejudice other stockholders generally of either company associated, or to interfere with the integrity of either company."

In *Camors-McConnell Co. vs. McConnell*, 140 F., 412, aff'd. *id.*, 987, an agreement by which the defendant agreed not to engage in a competing business in consideration of the formation of the corporation and the taking over by it of all the property, including the good will of the defendant's partnership, was held not to be within the act.

In *Whitwell vs. Continental Tobacco Co.*, 125 F., 454, the refusal of defendants to sell plaintiff tobacco products at prices which would enable him to resell them at a profit, unless he refrained from buying, selling or handling Club Chewing Tobacco made by independent manufacturers, was held not to be within the act.

In *Prame vs. Ferrell*, 166 F., 702, the plaintiff and defendant had been engaged as partners in the selling of machines, and had built up a business extending practically throughout the United States. Prame sold out to Ferrell, and agreed not to engage in the manufacture or sale of similar machines. Such covenant was held not to be within the act, the Court quoting from *Gibbs vs. Consolidated Gas Co.*, 130 U. S., 396, as follows (p. 705):

> "Public welfare is first considered, and if it be not involved and the restraint upon one party is not greater than the protection to the other party requires, the contract may be sustained."

In *Hopkins vs. United States*, 171 U. S., 578, an unincorporated association of commission merchants for conducting the sale of cattle at the Kansas City stock-yards was held not to be within the act, because its rules, and the restrictions imposed thereby, were held to be reasonably adapted to protect and enhance the business of its members.

In *Anderson vs. United States*, 171 U. S., 604, a like decision to that in the *Hopkins Case* was reached, the defendants in the Anderson case differing from those in the Hopkins case in that they were purchasers of cattle, while the defendants in the Hopkins case were only commission merchants.

In *Cincinnati Packet Co. vs. Bay*, 200 U. S., 179, the Court held not within the act a contract by which one company sold its steamers and other boats to another, agreeing not to engage for five years in competing with the purchaser in the freight and passenger business from Portsmouth, Ohio, to Cincinnati, Ohio. The Court said (p. 184):

> "We will suppose then that the contract does not leave commerce among the States untouched. But even on this supposition it is manifest that interference with such commerce is insignificant and incidental, and not the dominant purpose of the contract, if it actually was thought of at all. * * * This being our view of the covenant in question, whatever differences of opinion there may have been with regard to the scope of the act of July 2, 1890, there has been no intimation from

any one, we believe, that such a contract, made as part of the sale of a business and not as a device to control commerce, would fall within the act."

In *Phillips vs. Iola Portland Cement Works*, 125 F., 593, *certiorari* to review which was denied (192 U. S., 606), a contract by a manufacturer of cement in Kansas with some dealers in Texas for the sale of a large quantity of cement, on condition that it should not be sold by the purchaser outside of the State of Texas, was held not to violate the Sherman Anti-Trust Act on the ground that the dominant purpose was the promotion and protection of the seller's business, and any restraint of trade resulting only incidental and such as was reasonably necessary to protect the seller's rights.

In *Northern Securities Co. vs. United States*, 193 U. S., 197, a holding company with a capital of $30,000, which took over about $400,000,000 of stock of two competing railroads, was held to be within the act. Here the two railroads owed a public duty and each constituted what is aptly called a natural monopoly, and hence, as is well said in the *Tobacco Case*, their combination could not be made legal " by resorting to any disguise or subterfuge of form, since resort to reason rendered it impossible " to doubt its purpose was to violate the spirit, if not the letter of the statute.

In *United States vs. Trans-Missouri Freight Assn.*, 166 U. S., 290, and *United States vs. Joint Traffic Assn.*, 171 U. S., 505, agreements between competing railways, regulating rates and containing other provisions which restricted free competition between them, thus restraining the trade of shippers, were held to be within the act.

It should be noted, however, that intermediate the decision of these two cases the *Hopkins Case* was decided.

In *Addyston Pipe & Steel Co. vs. United States*, 175 U. S., 211, an agreement between certain manufacturers of iron pipe, the purpose of which was directly to increase the price and to restrict competition in certain specified territory, was held to be within the act.

In *Montague vs. Lowry*, 193 U. S., 38, the Court held within the act an agreement between manufacturers and dealers in tiles, etc., who agreed not to purchase from manufacturers not

members of the association and not to sell unset tiles to any one not a member of the association for less than 50 per cent. more than was charged members of the association, and that the manufacturers would not sell one not a member of the association, the penalty of violation of the agreement being forfeiture of membership.

In *Swift & Co. vs. United States*, 196 U. S., 375, the Court held within the act a combination of a dominant proportion of the dealers in fresh meat throughout the United States not to bid against each other in the live stock market, to bid up prices temporarily in order to induce the cattlemen to send their stock to the stockyards, to fix prices at which they will sell, and to restrict shipments of meat when necessary, to establish a uniform rule of credit to dealers, to keep a black list, to make uniform and improper charges for cartage, and finally to secure rebates from the railroads.

In *Loewe vs. Lawlor*, 208 U. S., 274, the Court held within the act a combination of labor organizations and the members thereof, to compel a manufacturer, whose goods were almost entirely sold in other States, to unionize his shop, and on his refusal to do so, to boycott his goods and prevent their sale in States other than his own until such time as the resulting damage forced him to comply with their demands. This decision was on demurrer and assumed the facts alleged to exist. The fact that subsequently, when heard upon the merits, the case was decided against the plaintiffs, does not affect the decision of the Supreme Court.

In *Shawnee Compress Co. vs. Anderson*, 209 U. S., 423, 433, the Court held void, whether considered under the common law, the Sherman Act, or statutes of Oklahoma, as placing upon the lessor a greater restraint than the protection of the lessee required, a lease of a compress to a combination, which it was found was securing compresses in such situations in various States as to control the business of compressing cotton, the lessor going out of the field of competition, covenanting not to enter that field again and pledging itself to render every assistance to prevent others from entering it.

In the *Tobacco Case* the Chief Justice stated (p. 182) six tests, from which he said (p. 183):

> "there comes inevitably to the mind the conviction that it was the danger which it was deemed would arise to

individual liberty and the public well-being from acts like those which this record exhibits, which led the legislative mind to conceive and to enact the Anti-trust Act, considerations which also serve to so clearly demonstrate that the combination here assailed is within the law as to leave no doubt that it is our plain duty to apply its prohibitions."

In the Standard Oil case, the Court said the Sherman Act did not include (p. 66) " all agreements under which as a result the cost of conducting an interstate commercial business may be increased," citing *Hopkins vs. United States*, 171 U. S., 578.

In the case at bar none of the features which are condemned by the Supreme Court in the *Standard Oil* and *Tobacco cases*, or in the decisions by the Supreme Court in other cases under the Sherman Anti-Trust Law, are present. On the contrary, in the case at bar the agreements complained of, and the acts of the parties thereunder, come clearly within the class of contracts which are not within the Act, and the inclusion of which within the Act the Chief Justice in the *Standard Oil* case said (p. 66) " would enlarge the application of the Act far beyond the fair meaning of the language used."

The prices of Sanitary Enameled Iron Ware were not *enhanced* to the *injury* of the *public*. The difference in the quality of the ware furnished the public would have justified a very material increase in price.

The cases cited show that prices may be fixed for the purpose, and with the result stated by Mr. Clow to have followed in this case (v. IV., p. 35), that is, that the manufacturer may direct his efforts to making the best possible article under a fixed cost and the competition between the manufacturers be in the quality of the articles produced; and, as stated by Mr. Sisk (v. IV., p. 86), that " seconds were eliminated from the market entirely, and the result was that we were selling a better class of goods, and while there would of necessity be a slight advance in price, that advance was made up for by the quality of the goods, so that I think the trade generally was benefited. They were getting better goods for their money;" but Mr. Sisk testified (p. 87) that the price to the plumber was, if anything, a little lower; and Mr. Sullwold said, " The proposed resale price is

considerably less than we are now getting" (Petitioner's Exhibit No. 165, v. II., p. 280, f. 2).

Moreover, there is no evidence in the case that the prices were actually increased either by Mr. Wayman or by the manufacturers. Mr. Wayman testified (v. IV., p. 196):

> "I took the printed prices of the various manufacturers that were in effect at that time and grouped the materials and articles into different classes in the shape of schedules, and to the printed prices I added certain percentages so that with the discounts and maximum rebate allowed the prices equaled approximately 5% below the then printed prices."

Enameled ware is sold under published price lists of the various manufacturers, with published discounts, and what Mr. Wayman means by the above testimony is that taking such published lists (which were all substantially alike) and first taking off the published discount he then took off a further discount of five per cent., so that the result necessarily could not have increased the prices.

In other words, there was a slight decrease, and no increase, of prices (v. II., p. 280; v. IV., p. 87).

The fact is there was no price fixed to the consumer (v. IV., p. 186). The manufacturers competed by reason of their differentials (v. IV., p. 187) and those between whom there were no differentials, as well as those between whom there were differentials, still further competed by including plumbing supplies in connection with the sanitary enameled iron ware, upon which plumbing supplies there was no price named and the manufacturers could fix their own prices.

The prices fixed were to the plumber, and the licensed jobbers competed among themselves by being able to sell their enameled ware in connection with other plumbing supplies which went with the enameled ware, which in a great many territories were, in fact, sold at cost or below cost. Any jobber in any part of the country could compete with any jobber in any other part of the country and offer different prices.

No control was attempted to be exercised over anything except the immediate product of the use of the patents (enam-

eled ware), and no attempt was made to control anything used in connection with the enameled ware.

The supply pipes, bath cocks, waste pipes, and all other plumbing fixtures, were sold at whatever price the manufacturer or the jobber saw fit to sell them. There was no attempt to control the price to the ultimate consumer, and the prices charged to the ultimate consumer varied (v. IV., p. 188).

Mr. Kroos, Secretary of J. M. Kohler Sons Company, to whose testimony counsel for the Government below referred in support of his claim that the prices were increased, and who testified that the increase over the amount which his firm was then receiving which his firm would have received had it adopted the Price List, ranged, according to a table which he had prepared, from 1¼% to 45% on the entire line (v. I., p. 464), was entirely discredited on cross-examination.

The witness admitted that he knew nothing about either the cost to or the price of the licensed manufacturers; that his table was prepared from his understanding of the Price List; that he did not know how the Price List was prepared, or on what theory it was prepared; that his table was not prepared with any intention of showing the cost of articles of Sanitary Enameled Iron Ware to the jobber or plumber according to the Price List, but represented merely his calculations to show what Kohler & Co. would have received for articles manufactured by them if the price of such articles were calculated upon the same basis as certain articles in the Price List manufactured by certain of the licensed manufacturers. It was clearly shown that Mr. Kroos either did not, or would not, understand how the Price List was formed and that in the order of his calculations he was in error.

The Court is earnestly asked, if it deems the question of increase of price to be important, and therefore considers it necessary to consider Mr. Kroos' testimony, to carefully read his testimony (v. I., pp. 464–489) and especially the following (p. 489):

> "Mr. Grosvenor: * * * The Exhibit does not state prices for any of the Standard goods or any of the licensed manufacturers, either on June 1st, 1910, or at any time subsequent thereto or prior thereto.

"MR. NOBLE: Does counsel for Government mean by the language used when he says 'price received by the Kohler Company' the amount which was received by the Kohler Company?

"MR. GROSVENOR: I mean the actual amounts received by the Kohler Company for the articles enumerated according to the sales system in effect and enforced by the Kohler Company, that system being enforced by the Kohler Company on June 1st and today, the Exhibit also showing the amounts which the Kohler Company would have received for those same articles if they had entered into the licensing agreement, and had calculated their prices according to the Resale Plan as the witness understands those prices to be applied."

After the cross-examination the Government abandoned the table prepared by Mr. Kroos and it is not printed in the record.

In the case at bar there was absolutely no limitation on production, but on the contrary the interest of all parties was to extend the sale of Sanitary Enameled Iron Ware manufactured by the use of the Arrott patent. Wayman's interest to do so was in order that he might receive greater royalty, and the corporation defendants' in order that they might make a larger profit.

There was no deterioration in the quality of the articles. The reason why there formerly was danger of deterioration in the quality of a monopolized article was that similar articles were not procurable elsewhere, and consequently the monopolist could get his price without regard to the quality of the article, and his interest led him to reduce the quality in order to make a larger profit. That is true in this case since the articles could be procured of those who did not take licenses.

The interest of the manufacturers who were the original producers of the ware was to improve the ware in quality—a benefit and not an injury to the public—and their object in entering into the agreements in this case was primarily for this purpose (v. IV., pp. 134–138), and this would continue to be to the interest of the manufacturers, lest vitreous china, porcelain

ware and other forms of competitive articles should again come into successful competition with their output.

The question presented in any case of an alleged violation of the Sherman Act under the decisions of the Supreme Court is a question of fact; and the facts established by the evidence in a particular case determine the quality of the acts according to their ultimate effect upon the public.

As said in the *Standard Oil Case*, "The development of more accurate economic conceptions and the changes in conditions of society" cause it "to be recognized" that acts formerly deemed to have a "harmful tendency" which induced legislation prohibiting or regulating them, do not now have such harmful tendency, if they ever did have such tendency; and in many cases are now deemed to have a beneficial, rather than a harmful tendency.

Thus it is realized that since it is no longer possible for the sovereign to grant a personal monopoly which not only gave the control of the article to the monopolist, but prohibited any others from manufacturing or dealing in articles of like kind, "freedom to contract was the essence of freedom from undue restraint or the right to contract."

In other words, that the success of an attempt to monopolize in the sense of securing a large part, or the whole, of any particular trade, was best prevented by the fact that as soon as it appeared profitable others would be induced to enter that field and by competition restrain the attempt within reasonable limits.

It follows that neither the mere fixing of price, nor restriction of competition, nor any other of the "catch phrases" so commonly used to create prejudice against so-called combinations, of themselves, or without consideration of the circumstances under which they are adopted, the purposes they are intended to serve, and the object sought to be attained, is contrary to the spirit of the Sherman Act.

They all, singly or together, may not operate in a given case to injure the public by an undue restraint on, or the monopolization of trade but on the contrary may operate in furtherance of the "fundamental purposes of the Statute" which the Chief Justice declared in the *Standard Oil Case* to be (p. 78) "to protect, not to destroy, rights of property." See, also, Terminal Case, *supra*.

As said in *Darius Cole Transp. Co. vs. White Star Line,* 186 F., 63, 66, it is "the dominant purpose" of the parties which determines the character of the agreements (pp. 68, 69):

> "If they are not unlawful and their due performance is not unduly prejudicial to the public they cannot be impeached by suspicion, or even proof, that the parties intended something wrong, so long as that proof does not go to any act or fact extraneous to the contract."

The dominant purpose of the Licensees in the case at bar was to forward their personal interests, and to protect and develop their trade by improving the quality of Sanitary Enameled Iron Ware, to the accomplishment of which the use of the Arrott invention by the various manufacturers was a necessary prerequisite, and incidental to which it was required that the manufacturers should be enabled to rely upon receiving a price which would enable them to use the Arrott invention advantageously so as to produce the best results, and that the licensees and their customers put on the market only licensed ware.

The dominant purpose of the licensor Mr. Wayman, was to secure as many licensees as possible; to promote and extend the sale of the product of the use of the invention; to enable the licensees to conduct their business successfully, following good manufacturing practice and producing the best results by the use of the Arrott invention; to insure the performance of the license agreements, for which purpose the conditions in the license agreements were imposed; and, in order to enable the licensees to carry out the covenants contained in the license agreements, to pay him his royalties and secure to themselves a reasonable profit to establish the price of the product of the use of the invention.

At the time the agreements in this case were entered into the trade in Sanitary Enameled Iron Ware was very much demoralized (v. IV., pp. 142, 143); the market was flooded with "seconds" (v. IV., p. 135). "Seconds" are articles which for any cause are defective (v. IV., pp. 40, 57, 135, 137, 142); but the defects were not discernible by the ordinary purchaser (v. IV., p. 135).

The manufacturers sold them as "seconds," but they were often bought by the plumber from the jobber when the specifications called for a first-class article, and the jobber was unable, even if he had knowledge of the facts, to prevent the plumber from doing so (v. IV., pp. 45, 66, 135).

Nevertheless the jobber was blamed and, upon discovery of the defects, the jobber had to replace the article or make an allowance, in either case at a cost exceeding his profit (v. IV., pp. 42, 82, 86, 92).

The result was that Sanitary Enameled Iron Ware was made unpopular both with the jobber and with the consumer (v. IV., p. 143). In fact, many of the jobbers considered the discontinuance of the handling of Sanitary Enameled Ware altogether (v. A, pp. 50, 62, 75, 97; v. II., p. 97; v. IV., pp. 39, 42, 58, 143). The consequence was that the sale in competition with Sanitary Enameled Iron Ware of porcelain and vitreous china was increasing, with the possibility of Sanitary Enameled Iron Ware being driven from the market entirely (v. I., p. 67; v. IV., pp., 134, 138, 142, 143, 185).

Then, the sale of "seconds" resulted in the cutting of prices, so that those manufacturers who made a good article were at a very great disadvantage (v. IV., pp. 68, 69).

The result of these conditions was that many sought to buy Sanitary Enameled Iron Ware wherever they could get it cheapest, without regard to quality (v. IV., p. 69), and many manufacturers offered to sell it at almost any price, in order to get cash (v. IV., p. 69).

It was in this condition of the trade that Mr. Wayman got the manufacturers of Sanitary Enameled Iron Ware to take the licenses (Petitioner's Exhibits Nos. 9 and 11) from him.

The testimony is uniform and uncontradicted that with the Arrott invention it was possible to make the ware of uniformly good quality, to make it quicker, to make it with less effort to the workman, to make it substantially without regard to the difference in the enamelers, whereas by the former process the personal equation of the enameler himself was an important element in determining the quality of the ware he would produce *(supra*, pp. 46, 47).

The testimony shows that by the method in use prior to the adoption of the Arrott invention it was impossible to

make ware of uniformly good quality, that "seconds" were almost necessarily produced, and they of course had to be sold.

As many of the articles were crated or boxed, it was often impossible to tell until the article was delivered at the building in which it was to be installed whether it was defective or not, and even then an ordinary person could not, in most cases, tell that the article was a "second." It was only when it was subjected to the effects of hot and cold water and used that the defects developed.

Instead of the jobbers being forced by the manufacturers under the License Agreement (Petitioner's Exhibit No. 9), to enter into the Jobber's License Agreement (Petitioner's Exhibit No. 11), the jobbers were only too glad to do so (v. IV., pp. 26, 38, 45, 54, 59, 66, 72, 75, 77-79, 82, 85, 86, 92), because, as they testified, they were perfectly willing for the manufacturers to have a fixed price which gave the maufacturers a reasonable profit over cost, inasmuch as this would enable manufacturers to compete in quality (v. IV., pp. 35, 36) and the competition between the jobbers remained just as keen (v IV., pp. 37, 40, 46, 51, 53, 55, 60, 61, 68, 88, 93, 187, 188, 190, 191, 219, 220, 221).

The jobbers say that the result of the License Agreement was that the "seconds" disappeared from the market, the quality of the enameled ware was very greatly improved and could be relied on, and the manufacturers knowing the price that they could obtain, vied with each other in trying to improve the quality (v. IV., pp. 26-28, 45, 54, 58, 60, 61, 74, 78, 79, 82, 86, 87, 143); and that since January 1st, 1911, when the restrictions were removed, the quality of the ware has greatly deteriorated, and conditions are even worse than they were before the agreements went into effect (v. IV., pp. 33, 52, 60, 64, 74).

Counsel for the Government asked several of the witnesses if they were not able by the method employed prior to the introduction of the Arrott invention, to make ware which was salable commercially. Of course it was true that ware was made which was sold; in fact prior to the Arrott invention there was no other known way of making it, and the ordinary purchaser was unable to distinguish between "seconds" and

a first-class article whether the latter was made by the use of the Arrott invention or not. Moreover, there is not one of the witnesses who claimed that by the old method the ware could be made in ordinary commercial practice of as good quality as that made by the use of the Arrott invention. And Mr. Bentley gave (v. III., p. 369) a most forceful answer to the question.

The testimony is uncontradicted that almost immediately after the agreements (Petitioner's Exhibits Nos. 9 and 11) went into effect "seconds" disappeared from the market (v. IV., pp. 39, 40, 45, 55, 60, 73, 82, 83, 86, 92), and that the quality of the ware improved (v. IV., pp. 26, 27, 28, 45, 54, 58, 60, 61, 74, 78, 79, 82, 86, 87), and the consumer got an honest article and one for which he was paying (v. IV., p. 46, v. A., pp. 51, 63, 76, 97).

It was not sufficient, however, to secure the adoption of the use of the Arrott invention by the manufacturers, because as long as wholly unlimited competition in prices continued the temptation to turn out the goods as rapidly as possible, so as to further diminish the cost of producing them, greatly promoted the production of "seconds." Even with the Arrott invention care must be taken in order to produce high class articles.

With established prices a manufacturer would be enabled to devote his whole attention to improving the quality of the ware. The idea was graphically expressed by Mr. Clow, who said (v. IV., p. 35):

> "I mean a plan that establishes a price so that a manufacturer will make the best article he can under a fixed cost. In other words, I want to do just exactly the same as the United States Government has done where it has said in certain cases that they were willing to pay a certain price for an article and wanted the best article they could obtain for that price, and they fixed the price. We want the manufacturers to fix a price at which an article is to be sold and then buy from the manufacturer that makes the best article. That is the only way in the world that you can get the material improved." * * *

(p. 36) " The real advantage of this plan is that it reduces the cost to the consumer by establishing a fixed price at which the manufacturer sells the article and a fixed price at which the jobber sells it, so that there is no incentive for the jobber to go to some outside man and get him to make some cats and dogs that are principally bitch pups to put upon the public, for which they have to pay. You have broken up the best thing that ever happened in the plumbing supply business for the consumer and you have spread hell all through the plumbing supply trade by giving them condensed essence of compressed trouble."

The prices were fixed, as has been previously stated, at about 5 per cent. below the then printed prices of the manufacturers, and the prices could not be changed by Mr. Wayman except with the consent of a committee of the manufacturers, and it is not to be supposed that that committee would consent to Mr. Wayman establishing an unreasonable increase of price which would tend to limit the demand for their goods. On the other hand, the committee could only recommend any change in prices, Mr. Wayman having the final decision of the question. Enameled iron ware is installed by the use of fittings and plumbing supplies. Neither the Committee nor Mr. Wayman had any control, nor did they attempt to exercise any control over the terms or prices at which the fittings and plumbing supplies could be sold. As stated elsewhere, these fittings and supplies were sold by the manufacturers and jobbers at cost or below cost, with the result that there was no suppression of competition among the manufacturers to the jobbers, among the jobbers to the plumbers, or among the plumbers to the consumers, and no increase in price.

The fact that the prices fixed in these agreements were not any higher than the prices which had prevailed before should be conclusive evidence of the fact that the raising of prices was not the dominant purpose of the parties, and that the agreement as to prices was not entered into for the purpose of enabling them to extort high prices from the public, but inci-

dentally to the legitimate purpose of improving the trade, benefiting their own trade by improving the quality of the ware sold to the public and the reputation of Sanitary Enameled Iron Ware generally.

Consequently the majority of the Court below was in error in holding that the agreements in the case at bar "fixed prices. For that purpose they were made. They had no other" (v. A, p. 112).

Furthermore, the self-interest of the owner of the patent to get all the royalties that he could would be opposed to doing anything to decrease the volume of trade in Sanitary Enameled Iron Ware, because the more that was manufactured and sold the greater his royalties.

To put it in another way, the manufacturers allowed Mr. Wayman, in the first instance, to fix the prices at about five per cent. lower than the prevailing prices. By the terms of the agreements they deprived themselves of the right to raise these prices by giving Mr. Wayman a veto upon any change in the prices. They at the same time agreed to pay a net royalty, upon each furnace in operation, of one dollar per day. They thus made it to the interest of Mr. Wayman not to agree to any undue increase in prices for fear it would have the effect of diminishing the output, thereby reducing the number of furnaces in operation, and thus reduce his revenue from royalties. But for these provisions of the agreements the manufacturers might have been tempted to limit the production, at the same time charging higher prices ; but, under the licenses as they accepted them, they deprived themselves of this liberty and this power.

And the "Zones" (v. IV., pp. 190, 191), referred to in the price list were established in order to enable jobbers to know the cost price of the goods (v. IV., pp. 190, 191), and to put the jobbers in the different sections of the country upon an equality (v. IV., p. 190), so that the manufacturers could compete in all sections of the country (v. IV., p. 190), and the jobbers could compete in all sections of the country (v. IV., pp. 73, 190). The reason the manufacturers and jobbers made money without increasing the price was that, on account of

the uniform good quality of the ware, there were fewer returns and fewer claims.

The fact that the parties did not raise the prices should be taken as conclusive evidence, for the time being, that they did not form this combination for any such purpose ; whereas, the fact that they did eliminate the " seconds " is evidence that they did form a combination for the purpose of improving the ware.

If we are correct in the above view, then the so-called " combination " was a lawful one and not violative of the Sherman Act—no matter whether the case is governed by the patent law or not. If the purpose for which the combination is formed is not injurious to the public, but extremely beneficial to the public—if that be the object of the combination, and that object be accomplished by the use of means which in themselves have done the public no harm whatever—it is hardly conceivable that such a combination can be deemed to be illegal, or a violation of the Sherman Act, the very purpose of which is to protect the public.

The provisions of the licenses (Petitioner's Exhibits Nos. 9 and 11) are all reasonably adapted to the purpose for which such agreements were made ; that is, to promote the trade in Sanitary Enameled Iron Ware by elimination of " seconds " and the improvement of its quality—the dominant purpose of the licenses—and are in no wise such " as to give rise to the inference or presumption that they had been entered into or done with the intent to do wrong to the general public or to limit the right of individuals " (*Standard Oil Case*, p. 58).

The provision as to rebates to the manufacturers was reasonably calculated to secure the performance of the covenants entered into by the manufacturers.

The provision requiring the jobbers to purchase Sanitary Enameled Iron Ware only from the licensed manufacturers was reasonably calculated to prevent the further sale of " seconds " and the consequent demoralization of the market for Sanitary Enameled Iron Ware, and, at the same time, to extend the sale and use of licensed Sanitary Enameled Iron Ware.

The provision requiring the jobber to sell at not less than

a fixed price was reasonably calculated to enable him to continue to purchase licensed Sanitary Enameled Iron Ware and to push the sale of such ware, while at the same time, as was testified, on account of the fact that the ware was rarely sold by the jobbers without trimmings, competition between the jobbers was not affected.

It is said that the Standard Sanitary Manufacturing Company is back of this combination. It is insinuated that the idea of effecting it did not originate with Mr. Wayman but with the Standard Sanitary Manufacturing Company. At any rate, it is argued that if the Standard Sanitary Manufacturing Company did not originate it, after Mr. Wayman had originated it the Standard Sanitary Manufacturing Company adopted it and co-operated with Mr. Wayman in the effort to carry it out.

Suppose this be so, what wrong has the Standard Sanitary Manufacturing Company done to its rivals in business or to the public? Suppose that instead of doing what was done, the Standard Sanitary Manufacturing Company had declined to license any of the manufacturers at all, and being by far the largest manufacturers —having some 50 per cent. of all the furnaces—it had made use of the great advantage which it enjoyed by reason of its ownership of the Arrott patent and its larger capital, to undersell all its competitors and continued to undersell them until they were driven out of business, would that have been a more lawful or commendable proceeding in the eye of the Sherman law?

It is not pretended that the Standard Sanitary Manufacturing Company refrained from taking this latter course from purely altruistic motives. If it had adopted that course the effect would have been the disappearance of Sanitary Enameled Iron Ware from the market altogether, judging by conditions already arising in the trade, as disclosed in the testimony.

In order to compete with the Standard Sanitary Manufacturing Company those manufacturers who did not use the Arrott invention would have been obliged to resort almost entirely to the sale of "seconds." It costs a great deal less to produce "seconds" than it does high class goods, especially when one hasn't the use of the Arrott invention, and these

manufacturers would have sold " seconds " in order to compete as to price, with the ware produced by the Standard Sanitary Manufacturing Company by the use of the Arrott invention. But the fact that an article of Sanitary Enameled Iron Ware is a " second ", that is, is defective, is very frequently not perceptible except to the eye of the expert, and great quantities of this ware were already being sold and a great deal more of it would have been sold had the Standard Sanitary Manufacturing Company adopted the course suggested. The result would have been that the reputation of Sanitary Enameled Iron Ware—which had already been considerably damaged—would have become so bad that the jobbers would have ceased to handle it and used their influence to push the use of its rivals—vitreous china, porcelain and other forms of the articles. So that it must be clear that the *dominant* purpose of the parties was not to secure an enhanced price, not to limit the output, not to injure the public or any individual, but to benefit all parties engaged in the Sanitary Enameled Iron Ware trade, and to give the public the best possible article.

About a year prior to the making of the License Agreements (Petitioner's Exhibits Nos. 9 and 11) the Standard Sanitary Manufacturing Company had granted to the Colwell Lead Company, at the latter's request, a license to use the Arrott invention upon the payment of a royalty of $1 per day per furnace, that is at the same net royalty upon which the licenses in the case at bar were granted (v. III., pp. 474, 475). This shows that the purpose of the parties was not to suppress competition, since the Colwell Lead Company was a competitor of the Standard Sanitary Manufacturing Company in the sale of its goods, and the granting of the license by the Standard Sanitary Manufacturing Company tended to build up its competitor and extend its business rather than to restrain trade.

It also shows that the Colwell Lead Company deemed the use of the Arrott invention sufficiently valuable to justify the payment of the same royalty paid under the licenses in the case at bar, without any stipulation as to the maintenance of prices. The stipulation as to prices, contained in the licenses

in the case at bar, is merely in addition to and not in any sense an essential part of the consideration to the Colwell Lead Company.

The willingness of the Standard Sanitary Manufacturing Company to grant a license to the Seamless Steel Bath Tub Company shows a similar willingness to build up the trade.

In other words, the agreements were made with the intention of steadying the market, increasing the use of Sanitary Enameled Iron Ware, increasing the competition in such ware, giving the consumer an honest article of good quality, and enabling the manufacturer and the jobber to make a fair profit (v. IV., pp. 29, 30, 35, 36, 42, 46, 49, 58, 60, 67, 74, 87, 93). There was no intention, and there is no provision in the agreements, and there has been no action under the agreements, which was directed to interfering with the business of anyone outside of the agreement, either by under-selling them to injure their business, or by any other means to compel them to come into the alleged combination.

The agreement is very much less stringent than that upheld in *Mogul S. S. Co. vs. McGregor*, *supra*, which was cited by Mr. Chief Justice WHITE in the *Standard Oil* case as evidencing a contract, agreement, or combination which, at the time of the passage of the Sherman Anti-Trust Act, was held in England to be valid under the Common Law, and, consequently, under the Sherman Act (*Standard Oil decision*, pp. 56, 57).

This point can not be closed better than in the language used by Judge PUTNAM in the Shoe Machinery case (*United States vs. Winslow*, *supra*). That was a criminal case it is true, but the principles announced apply equally here. In that case a combination had been formed of several corporations controlling patents on machines for lasting, heeling, welting and soleing shoes, which substantially controlled the shoe manufacturing industry. Judge PUTNAM waived the patent feature and decided the combination was not in violation of the Sherman Law, saying in part (p. 592) :

> "This combination then formed was purely an economic arrangement, not in violation of any rule in

> restraint of trade at common law or which has been announced by the Supreme Court. * * * A combination * * * for the purpose of constructing economically and systematically and of furnishing any customer the whole or any part of a thing * * * is in strict and normal compliance with modern trade progress. Such being the fact, the law as explained by Chief Justice WHITE" (*U. S. v. Standard Oil Co.*, 221 U. S., 1, 58) "has kept hand in hand with 'developing trade' * * * (p. 593). We have examined every decision of the Supreme Court bearing on these topics, some * * * were decided or might have been on the ground that they involved agreements for the suppression of corporations having a public character. * * * All the other decisions involved the well known rule which prohibits stifling bids or portioning out territory arbitrarily. * * * None of them penalize a combination like that originally found in the present case * * * (p. 592). It is absolutely normal and in accordance with the rightful demand of the market."

The decision in the foregoing case might have been written for this case, the circumstances and reasoning are so appropriate.

But in This Case the Sherman Act Has No Application.

At the time the agreements (Petitioner's Exhibits Nos. 9 and 11) were entered into, Mr. Wayman was admittedly the owner of record of the patents therein referred to.

For the purposes of this case it is immaterial how he acquired them, whether they were given to him, whether he paid little or much for them, or whether the title was placed in him by the Standard Sanitary Manufacturing Company merely for the purpose of his making these licenses.

In *United States Fire E. C. Co. vs. Joseph Halsted Co.* (D. C., N. D., Ill., E. D., Apr. 16, 1912), 195 F., 295, the defendant sought to defend a suit for infringement by the Assignee of a

patent on the ground that the assignment was in aid of a combination in violation of the Sherman Act, and therefore void. The Court, SANBORN, D. J., said (p. 298):

> "A patent transfer is valid to pass title, even though made pursuant to unlawful combination. * * * Neither grantor nor grantee may question it. * * * Even though the sole inducement and consideration for the patent transfer were the expected benefits to be realized from the trust, yet this does not avoid it. * * * The sole value of patent property resides in monopoly. Within certain limits this monopoly may be made to extend to non-patentable property as just decided by the Supreme Court in Henry v. Dick." * * *

In *Bement vs. National Harrow Co., supra*, the Court said (p. 92):

> "But that statute" (the Sherman Anti-Trust Act) "clearly does not refer to that kind of restraint of interstate commerce which may arise from reasonable and legal conditions imposed upon the assignee or licensee of a patent by the owner thereof, restricting the terms upon which the article may be used, and the price to be demanded therefor. Such a construction of the Act, we have no doubt, was never contemplated by its framers."

In *Rubber Tire Wheel Co. vs. Milwaukee Rubber Works Co., supra*, the Court expressly held that the Sherman Law was not applicable to agreements under the Patent Law, saying (p. 362):

> "Congress, having created the patent law, had the right to repeal or modify it, in whole or in part, directly or by necessary implication. The Sherman Law contains no reference to the patent law. Each was passed

under a separate and distinct constitutional grant of power; each was passed professedly to advantage the public; the necessary implication is not that one iota was taken away from the patent law; the necessary implication is that patented articles, unless or until they are released by the owner of the patent from the dominion of his monopoly, are not articles of trade or commerce among the several states.

"The evils to be remedied by the Sherman Law are well understood. Articles in which the people are entitled to freedom of trade are being taken as the subjects of monopoly; instrumentalities of commerce between which the people are entitled to free competition were being combined. The means of effecting and the form of the combination are immaterial; the result is the criterion. The true test of violation of the Sherman Law is whether the people are injured, whether they are deprived of something to which they have a right."

This was an action to recover royalties under a license agreement almost identical with the license agreements in the case at bar; so that the case is on all fours with the present case.

See, also,

Goshen Rubber Works vs. Single Tube A. & B. Tire Co., supra.

Indiana Mfg. Co. vs. J. I. Case Threshing Mach. Co., supra.

The cases in which it has been held that a violation of the Sherman Act is no defense in infringement suits, are numerous.

In *Johns-Pratt Co. vs. Sachs Co. et al.*, 176 F., 738, the Court said (pp. 739, 740):

"The question of law which stares us in the face is this: Does an allegation that the complainant is a party to an unlawful conspiracy, which tends to restrain trade and oppress the defendant in its business, afford any defense to a suit for the infringement of letters patent, the title to which is vested in the complainant?

"This question has been answered in the negative by the courts with such unanimity and decisiveness that it would be wasted energy for me to do more than cite National Folding Box & Paper Co. v. Robertson (C. C.), 99 Fed., 985, in which my very dear friend, the late Judge TOWNSEND, examined the matter with care."

See, also,

Otis Elevator Co. vs. Geiger, 107 F., 131.
National Folding Box & Paper Co. vs. Robertson, 99 F., 985.
Bonsack Machine Co. vs. Smith, 70 F., 383.
Strait vs. National Harrow Co., 51 F., 819.
Brown Saddle Co. vs. Troxel, 90 F., 620.
Soda Fountain Co. vs. Green, 69 F., 333.
Edison El. Light Co. vs. Sawyer-Man Co., 53 F., 592.
Columbia Wire Co. vs. Freeman Wire Co., 71 F., 306.

Under the head "The Law of Patents" (*supra*, pp. 32-37) it has been shown that, under the laws of the United States and the decisions construing them, the owner of a patent may impose upon his licensees any conditions that he pleases; that he may fix the prices at which his immediate licensees shall sell, and also the prices at which those buying from such licensees shall sell; that he may restrict his licensees and those who purchase from them, as to the persons with whom they shall deal; that he may prescribe that his licensees and those who purchase from his licensees shall deal only in the licensed articles; that he may impose like restrictions upon unpatented articles, if handled by his licensees or those who purchase from his licensees; that he may prescribe that his licensees shall sell the articles produced under the terms of the license only through him, thereby enabling him to fix prices and conditions of sale; that he may prescribe that his licensees and those who purchase from his licensees shall procure articles used in connection with the article produced under the license only from the licensor, or from persons designated by the licensor; and, finally, any condition that is reasonably adapted to promote the use of the invention, protect and en-

hance its reputation, secure greater returns to him from the invention and secure the making of such returns.

The following quotations are from cases in which the facts were similar to those in the case at bar and amply support the foregoing statement:

> "If * * * a stipulation in an agreement between patentees and dealers * * * which fixed a price * * * would be a reasonable and valid condition, it must follow that any other reasonable stipulation, not inherently violative of some substantive law, imposed by a patentee as part of the sale of a patented machine, would be equally valid and enforceable" *(Henry vs. A. B. Dick Co.*, 224 U. S., 1, 31).
>
> "The course of the law is not to be turned aside because the practical result may be to give a patentee for the time being more than the patent office contemplated" (*Henry vs. A. B. Dick Co.*, 224 U. S., 1, 33; *Dovis Electrical Co.*, 60 F., 276, 280; *Thomson-Houston Co. vs. Kelsey Co.*, 72 F., 1016).
>
> "The power to make such leases" (in the case at bar licenses) "appears to be within the protection granted by the patents" *(United Shoe Machinery Co. vs. Euclid L. La Chappelle, supra).*
>
> "Whatever else may be said of such monopoly, it nevertheless is built on the patent and not a combination" *(United Shoe Machinery Co. vs. Euclid L. La Chappelle, supra).*

As long as the provisions contained in the licenses are such as are calculated to secure to him the advantages derived from the ownership of the monopoly covered by the patent, he may lawfully make them without regard to his motive or intention, and no question can be raised as to the use of the patent being a subterfuge, or as to whether the agreements are made in good faith or not.

It is only when there are included in the licenses some provisions entirely outside of the right of the licensor to enhance the value to him of his invention, or provisions which are on the border line between his right to prescribe any conditions which enhance the value of the invention to him and

provisions entirely outside of such right, that the question of good faith of the transaction arises.

If the question of good faith is to be considered, defendants insist that they shall be allowed to take the testimony of all the defendants as they can prove among other things that the licensees were required to instal the Arrott invention and were warned that, until they did so, they could not treat their product as coming under the terms of the license.

The value of the invention in the manufacture of Sanitary Enameled Iron Ware is thoroughly established by the testimony (*supra*, pp. 38–50).

The Government's contention is that the license went too far in fixing a price upon the product of the use of the Arrott invention.

No authority was cited for this proposition, and, on principle, it would seem clear that the decisions cited in the brief to sustain the proposition that the owner of a patent has the right to prescribe conditions apply to this case.

A great deal was made below on the part of the Government of the terms used in Petitioner's Exhibits Nos. 9 and 11, which, it was said, evidenced the fact of an intent to deceive and that the licenses were fraudulent.

There is no allegation in the petition of any facts which would constitute a fraud, consequently what was said in this connection has no place in the case, and should be disregarded by the Court.

The most that is alleged in the petition is (v. A, p. 9):

> "The sole purpose of the assignments was that the patents might screen the real intent of the defendants and serve as a mere subterfuge and device to evade the Sherman Anti-Trust Law."

This is only an allegation of a conclusion and insufficient, even if it be construed as an allegation tending to allege fraud. The rule is that the allegation of fraud is insufficient unless the facts from which the fraud can be inferred are stated.

But it is submitted that the words used in the licenses were used properly.

In the specification of the Arrott patent (v. II., pp. 190,

192), the former method of enameling is described, the objects sought to be attained by the invention set forth, and the manner of operation and the effect produced by the use of the invention detailed.

Since by the use of the Arrott invention a piece of cast iron, in the shape of the article desired, is converted into what is apparently an article made of white porcelain, it would seem fair to speak of its use as practicing a process, or method of manufacture.

While technically a patentable process means the application, or operation, of some element or power of nature, or the use of one thing with another to produce a new result, as tanning, dyeing, smelting ores, or the like—for instance, a driven well is held to be a patentable process (*Boyd vs. Cherry*, 50 F., 279, 282; *Andrews vs. Carmen*, 1 Fed. Cas., 868, 870, 871; *Risdon Iron and Locomotive Wks. vs. Medart*, 158 U. S., 68), the change wrought by the use of the Arrott invention in applying the enameling powder to the cast iron article is sufficiently analogous to a "patentable process" to be called a process.

So the statement in the license that the licensee was licensed "to use and sell goods so made" was a fair statement of the facts, since the licensor might have granted the license simply to make and use the invention without giving the right to use, or sell the product of the use.

A similar statement is sufficient as to the objection to the terms used in the Jobbers' License Agreement and in the labels, etc.

Therefore, the Government's contention with regard to the terms used in the agreements being evidence of deceit or fraud, falls to the ground. Actual fraud never turns on a quibble of words.

It was also contended that the defendants gave evidence of "conscious wrongdoing by the form in which the various transactions were embodied." Had the quotation, which is taken from the decision in the Tobacco Case been completed it would have been as follows (p. 182):

> "by the ever present manifestation which is exhibited of a conscious wrongdoing by the form in which the *various* transactions were embodied from the beginning, ever changing, but ever, in substance, the same"

and it would have appeared that the quotation was entirely inapplicable to the present case.

Certainly the owner of a process patent could prescribe in his license to use the process, that he should receive as royalty for the use a certain percentage of the product of the use (*Henry vs. A. B. Dick Co.*, 224 U. S., 1, 32). If he could do this, which would be not only to control the disposition, but to secure the title to a portion of the product, he certainly could prescribe the price or conditions upon which the product could be disposed of. In certain cases this might be essential to his securing any income from the use of his invention. It is admitted on all sides that under the Patent Laws an inventor can, by reason of his right of exclusion, acquire all the benefit possible from his invention.

The foregoing being true, it seems to follow, as the day the night, that Mr. Wayman as the owner of the patent could fix the price and prescribe the conditions at and upon which the product of the use of the Arrott invention should be disposed of.

The suggestion below that the price might have been fixed upon the dredger, is utterly inapt, since the licenses do not purport to license the manufacturers to make and sell the dredger, but only to make and use it.

We do not contend here that Mr. Wayman could limit his Licensees' power or right to sell an unpatented article. That is a question by itself. What we do claim is that his right to exclude others from using the invention empowers him to prescribe the conditions on which an article made by the use of his invention should be sold, which is an entirely different proposition (*Henry vs. A. B. Dick Co.*, 224 U. S., 1, 24)

The Government contends that the provision in the Jobbers' License Agreement (Petitioner's Exhibit No. 11, par. 10) prohibiting the Jobber from purchasing Sanitary Enameled Iron Ware from an unlicensed manufacturer, under penalty of being unable to purchase thereafter from licensed manufacturers and of forfeiting his discounts or rebates then held by the Licensor, goes beyond what is permissible to the owner of a patent. Similar provisions are common in patent licenses. The owner of a license, in order to introduce his invention may prescribe that the Licensee shall devote his whole time to the exploitation of the invention. He may prescribe that he shall handle

no articles of a like character. The *Bement Case (supra)* upheld such a provision, and other cases are cited in this brief to the same effect.

But in this case there was something more. As has been said, the dominant purpose of the parties to this agreement was to do away with "seconds," and to improve the reputation by improving the quality of Sanitary Enameled Iron Ware so as to re-establish it in the market and to prevent further inroads upon it of porcelain and vitreous china, and other forms of competitive articles. The only way by which this could be accomplished in Mr. Wayman's opinion was to have all the manufacturers use the Arrott invention, and to prescribe that those using it should not manufacture or sell "seconds."

As has been explained, with the Arrott dredger, with proper care, articles of uniform good quality could be made without regard to the individuality of the enameler; but if the enameling was done carelessly, hastily and without proper inspection "seconds" might be produced though the Arrott dredger was used.

Paragraph 10, therefore, was an entirely proper provision under the Licensor's right to protect and enhance the value to him of the invention. By it Jobbers were not permitted to purchase Sanitary Enameled Iron Ware except from licensed manufacturers and the manufacturers of licensed Sanitary Enameled Iron Ware were prohibited from making or selling "seconds." There is nothing reprehensible in this.

By his system of auditing the books of the various Licensees (manufacturers and jobbers), Mr. Wayman could check the jobbers and ascertain if they had any "seconds," and, upon tracing these "seconds," could find (*a*) whether the jobbers were observing their contracts; and also (*b*) whether the manufacturers were keeping their covenants; and he would learn of "seconds" through complaints from the jobbers. The established prices dealing only with sound articles, if "seconds" were found, it would mean the manufacturers were violating their contracts.

Moreover, the fact that the jobbers would purchase only Licensed Sanitary Enameled Iron Ware tended strongly to increase its sale, since the public was thereby induced more generally to purchase licensed Sanitary Enameled Iron Ware.

It did the public no injury because the testimony is over-

whelming, and entirely uncontradicted, that the Sanitary Enameled Iron Ware produced by the use of the Arrott invention was much better than that produced by any other method.

Further than this, as was said in the *Bement case (supra)* there is nothing in the agreements here to prevent the manufacturers from adopting any improvements in the manufacture of Sanitary Enameled Iron Ware, nor to prevent the jobbers purchasing from the licensed manufacturers ware made by the use of such improvements, and this without being in any wise penalized.

Consequently the public was benefited either way.

There is no provision in the agreements which imposes any penalty, or in any way tends to attack or injure any independent. All were admitted on the same terms (v. IV., p. 173; *United States vs. Terminal R. R. Ass'n,* 224 U. S., 383, 410).

Construed in the strictest manner, the License Agreements (Petitioner's Exhibits Nos. 9 and 11) deprive the public of nothing to which it is entitled (*Henry vs. A. B. Dick Co.*, 224, U. S., 1, 31, 32). They do not create a monopoly in the sense in which that term is used in the Sherman Act or operate as a restraint of trade, since they affect only the ware which is produced by the use of the Arrott invention.

Inasmuch as the public has no rights whatever in ware thus produced, save such as the owner of the invention which produces it may choose to grant, no wrong has been done in any event. No one can use the Arrott invention without Mr. Wayman's consent. Consequently no one can get Sanitary Enameled Iron Ware made by the use of the Arrott patent without Mr. Wayman's consent. From which it follows that no one can get Sanitary Enameled Iron Ware made by the use of the Arrott invention, except upon such terms as Mr. Wayman may impose, and no one has any right to get such ware at all.

In the words of a recent opinion of this court "by selling it subject to the restriction he took nothing from others and in nowise restricted their legitimate market" (*Henry vs. A. B. Dick Co.*, 224 U. S., 1, 32) and "the public permitting the invention to go unused loses nothing which it had before" (*Henry vs. A. B. Dick Co.*, 224 U. S., 1, 34, 35).

Similarly it has been held as to contracts not to disclose trade secrets because the public has no right thereto (*Peabody vs. Norfolk*, 98 Mass., 452; *Jarvis & Lobdell vs. Peck*, 10 Paige, 118; *Vickery vs. Welch*, 19 Pick. (Mass.); *Tode vs. Gross*, 127 N. Y., 480; *Thum Co. vs. Tloczynski*, 114 Mich., 149; *Bryson vs. Whitehead*, 1 Sim. & Stu., 74; *Harrison vs. Glucose Sugar Refining Co.*, 116 F., 304, 311), which cases are not inconsistent with the decision in *Dr. Miles Medical Co. vs. Park & Sons*, 220 U. S., 373, because there it was the sale of the article made by the use of the trade secret and the distinction analogous to that between the invention and the patented article was recognized.

It may be conceded that there are limitations upon the right of vending and using a patented article if it belongs to a class which on account of its inherent danger to the public safety or health cannot be sold or used because prohibited by an exertion of the police power of the state (*Henry vs. A B. Dick Co.*, 224 U. S., 1, 29; *Patterson vs. Kentucky*, 97 U. S., 501; *Webber vs. Virginia*, 103 U. S., 344, 348; *Allen vs. Riley*, 203 U. S., 347; *United Shoe Machinery Co. vs. Euclid L. La Chapelle, supra*); but that does not include bath tubs which the same theory commends, and refers to the article not the invention overlooking the distinction pointed out in *Henry vs. A. B. Dick Co., supra.*

In *United States vs. Winslow*, 195 F., 578, 594, the court said, referring to the contention that the parties to the combination controlled 90 per cent. of the trade "we do not attach much importance to this percentage because that standing alone is like one term of an algebraic equation which of itself is non-efficient". In the case at bar, it was claimed defendants controlled 85 per cent.

The Government's argument below was made from the standpoint, which its evidence failed to establish, of a preconceived idea of the facts in the case.

The "underlying atmosphere" referred to in his argument by one of the Government's counsel below is what is spoken of by Judge SEVERENS in *Darius Cole Trans. Co. vs. White Star Line* (186 F., 63, 69) as "suspicions * * * that the parties intended something wrong", and as he says "cannot impeach" a contract if its provisions "are not unlawful and their due performance is not unduly prejudicial to the public", so long

as the proof "does not go to any act or fact extraneous to the contract."

The Government admitted in the argument below that the idea of the licensing system was Mr. Wayman's, and that he sought to establish it for his individual benefit; but it says that the manufacturers and jobbers wanted a resale price and that they seized upon Mr. Wayman's idea and used him to enter into an arrangement in violation of the Sherman Anti-Trust Act.

It is matter of common knowledge that a person seeing an opportunity of bettering himself by securing control of a patent and granting licenses thereunder frequently (as soon as he ascertains that he can secure control of the patent, it matters not whether by an enforcible written contract, a formal option, or merely by the promise of a person upon whose word he has a right to rely) proceeds to ascertain whether or not he can secure the licensees he desires.

If Mr. Wayman's ambition was a legitimate ambition, if his project was a lawful project both in its inception and consummation, the means employed by him for its accomplishment are of no concern if they too are legal. As a matter of fact he could not have proceeded otherwise than he did and achieve the results contemplated.

Whether the arrangement with Mr. Dawes, as to Mr. Wayman's securing control of the Arrott patent, was a formal option or not, Mr. Wayman was entirely justified in proceeding forthwith to try and get the manufacturers to take licenses from him under that patent; and Mr. Wayman and Mr. Dawes believed it to be an option and treated it as such.

Mr. Wayman testified that after receiving the options he approached the manufacturers, in the first instance, individually. After he had secured the consent of a number of them to enter into license agreements with him upon the general terms he outlined, it was natural and entirely proper that he should bring them together in order that the details of the licenses might be discussed.

It was essential that the licenses granted to the various manufacturers should be, in general terms, uniform. No manufacturer would take a license upon less advantageous terms than those given his competitor. Moreover, competitors in business are naturally suspicious of each other, and if, after

he had secured from the individual manufacturers the consent to accept licenses upon the general plan outlined, Mr. Wayman had attempted to reach an agreement with each manufacturer separately upon the details of the license, he would have had an almost interminable job.

The natural way, substantially the only way, was to get the manufacturers together and discuss with them the terms which he was willing to make, and they to accept, in the licenses.

When, as was the fact at the meeting at the Hotel Astor, it was found impossible with so many to successfully discuss and fix upon the details, the natural, ordinary way was to have the manufacturers designate a number of their members, sufficiently small to be manageable, to confer with Mr. Wayman in regard to the matter.

Hence the Price and Schedule Committee. That the expenses of the Committee should have been paid by subscription of the manufacturers was only proper. The evidence is—and it is not disputed by the Government—that Mr. Wayman paid his own expenses. Whether he paid them from the salary he received as Commissioner of the Association or by pawning his chattels is immaterial.

No inference against the validity of the patent agreements is to be drawn from the fact of the meetings of the manufacturers, from the appointment of the so-called Price and Schedule Committee, from the meetings at Mt. Clemens or from the manner in which the expenses of the Committee were paid.

The argument below of the representatives of the Government that in the correspondence the elimination of "seconds" as the object to be accomplished is not mentioned, is answered by the fact that all of the correspondence treats of the bad conditions existing in the trade, which bad conditions, the testimony shows, were due almost entirely to the existence of "seconds," and to the further fact that it was believed a price agreement was illegal unless founded on a patent. When this was suggested, naturally that was prominent in the correspondence.

To summarize the situation: the trade in Sanitary Enameled Iron Ware was demoralized. The ware itself was discredited, owing to the prevalence of "seconds". To reestablish the business and the reputation of the ware it was

necessary to eliminate "seconds" from the market. This could not be done without an agreement as to prices. Was a price agreement ever lawful? Who knows positively to this day? But if the manufacturers could be induced to manufacture their wares by means of the Arrott invention there would be no excuse for turning out defective goods; and if, as a condition of licensing the use of said invention a staple price could lawfully be imposed for the sale of ware made by its use and the marketing of "seconds" prohibited, the problem would be solved. This was Mr. Wayman's scheme in a nut-shell. All of the innuendoes and insinuations of counsel for the Government cannot make it other or different. If it was wrong, so be it. But before pronouncing it wrong please to note that it had the effect intended without complaint from jobbers, plumbers, or the general public. Only the Government complains. What of? The ultimate purchaser got a better article at no greater cost, while competition was substantially as rife as ever, except that it took the form of better goods for the price or collateral bonuses in the way of plumbers' materials and supplies.

As we have already shown, the resale agreement was a necessary part of the plan to eliminate "seconds," improve the quality of the ware, and increase the demand for Sanitary Enameled Iron Ware.

Similarly, after Mr. Wayman had persuaded Mr. Dawes and the Standard Sanitary Manufacturing Company of the advantages to be derived from the acceptance of his plan, it was natural that Mr. Ahrens, the president of that company, and Mr. Torrance, its vice-president, should be interested to aid Mr. Wayman in extending the plan as much as possible, and this accounts, in a natural, reasonable and proper manner, for the actions of those gentlemen and the letters which they wrote, but which the Government seeks to torture into evidence of a violation of the Sherman Act.

The argument made on behalf of the Government that Mr. Kohler, Mr. Kelly and others were sought to be forced into entering into the License Agreements is not supported either by the evidence or by the facts. The most that can be claimed from the evidence is that Mr. Wayman and, at his request, Mr. Torrance, Mr. Ahrens and others, tried to persuade Mr. Kohler, Mr. Kelly and others to enter into the License Agree-

ments by pointing out to them the existing difficulties in the trade and the advantages to be gained by the License Agreements. This is all that was done at the various meetings with these gentlemen, either separately or together, or at the meeting in Philadelphia between Mr. Kelly, Mr. Wayman, Mr. Torrance and certain jobbers, as to which the Government makes the claim that it was an attempt by the Standard Sanitary Manufacturing Company to compel those jobbers to take License Agreements. There was no attempt at coercion, intimidation nor was any fraud practiced.

Paragraph 10 (Petitioner's Exhibit No. 11) was not designed to interfere at all with the trade of the so-called independents, but rather to promote the use of the invention by extending the sale of the product of its use.

On behalf of the Government considerable stress was laid below upon the fact that after the removal, on January 1st, 1911, of the restrictions other than those as to the making and selling of "seconds" and the payment of royalties, the ware deteriorated in quality notwithstanding that the manufacturers continued to use the Arrott invention. It is argued from this that the use of the Arrott invention is not as essential to the manufacture of good Sanitary Enameled Iron Ware, as is claimed by the defendants.

The argument is a *non sequitur*, for the reason that, in addition to the manufacturers who did not take licenses, and which included such large manufacturers as J. M. Kohler Sons Co., and Iron City Mfg. Co. (Kelly's Company)—the latter according to the testimony sold by the run of the kiln—the Cahill Iron Works and the Kerner Mfg. Co. had given notice of withdrawal from the licenses prior to January first, 1911, and therefore could not use the Arrott invention without infringing the patent and being liable to Mr. Wayman for damages.

There were also the Blairsville Enameled Ware Co., the Clymer Mfg. Co., Louis Lipp, Washington Iron Works, Vollrath, Jones-Holloware Co., and the Rundle Mfg. Co. The independent manufacturers had 40% of the furnaces in operation (v. IV., pp. 173, 174).

Another reason for the re-appearance of "seconds" may well have been that when the jobbers' licenses expired on December 31, 1910, some of the licensed manufacturers relaxed the rigor of their inspection, and endeavored to make as many

articles as possible without regard to the quality. As has been said, if the Arrott invention was used without proper care simply to produce articles quickly, defective articles might occur even when it was used.

One of the witnesses testified that, out of a shipment amounting to $4,000, after the restrictions were removed, $1,500 worth was rejected, and the manufacturer made a 50 per cent. reduction (v. IV., p. 74). This shipment was from a manufacturer who had adopted a new enameling powder said not to contain oxide of tin, which would easily account for the defective articles.

A further reason for the re-appearance of "seconds" may have been the fact that Mr. Wayman no longer had the right to audit the books of the jobbers so as to find if they had any "seconds" on hand, and there was no relation between him and the jobbers which permitted the jobbers to complain to him that they had received "seconds" from licensed manufacturers.

No inference is therefore to be drawn against the value of the Arrott invention in the manufacture of Sanitary Enameled Iron Ware from the re-appearance of "seconds" in the market after the removal of the restrictions January 1st, 1911.

The Hotchkiss, Vail & Garrison Company were referred to below as being very high class jobbers and had built up a trade *de luxe* in New York, and the statement was made that they were among the jobbers whose trade was being restrained by the defendants. It appears that the Hotchkiss, Vail & Garrison Company wrote to Mr. Wayman stating that they did not desire to comply with his request that they itemize the articles in their bills, because it was their practice to change the names of the tubs and to sell the enameled ware articles as their own and in connection with elaborate fixtures, and to give lump sum prices, and that if they were required to itemize the bill it would disclose to the plumber that they charged more for the sanitary enameled ware than the schedule of prices set forth in Mr. Wayman's price list (v. II., p. 180).

Claims Made on Behalf of the Government Not Sustained.

To answer shortly some of the claims made below on behalf of the Government, which the defendants deny:

It cannot be truthfully said that Mr. Wayman, who as

Commissioner received a salary of $4,000, and who as the owner of the patent and the licensor expected to make from $25,000 to $30,000, if not more, a year, was not the person principally interested in putting through the licensing system.

The reasons for the Standard Sanitary Manufacturing Company assigning the patents to Mr. Wayman and entering into the License Agreements were simply business propositions. By doing so they secured the re-establishment of Sanitary Enameled Iron Ware in the favor of the public, the increase of its sale, their share of which would be one-half, competition under more favorable conditions with their rivals, and a price upon which they could count. It received $10,000 in cash. It was compelled, if it desired the lesser manufacturers to take licenses and pay a royalty, to do the same thing itself, or otherwise the lesser manufacturers would have been at a disadvantage equal exactly to the amount of royalty paid.

But it is argued that the Standard Sanitary Manufacturing Company, under the facts in the case, did not receive any direct monetary benefit; this loses sight entirely of the compensating benefit it received in the increased sale and popularity of its product, the avoidance of long and slow infringement litigation necessary to protect its patent, and that it expected, naturally, a much greater return in the future by reason of the general improvement in Sanitary Enameled Iron Ware, the increased popular demand created thereby, and the naturally to be expected increase in the sale of its own product, since that is about 50% of the whole sold in the United States.

There was nothing in the fact that the agreement to assign the patents provided that at the end of two years the assignor might reclaim them while the assignment was absolute. This is not an uncommon form. The assignment is recorded at the Patent Office and the assignee becomes the owner of the patent as to all the world except the assignor, who, as against the assignee, may require the reassignment of the patent at the expiration of the time limit.

The letters of April 16, 1910, one of which appears (v. II., p. 229) are not at all inconsistent with the defendants' contention that the so-called Price and Schedule Committee, elected by the manufacturers and which met at Mt. Clemens, was advisory and that Mr. Wayman merely conferred with them with regard to the details of the agreements.

The resolution in the minutes of the meeting of February 1, 1910, and Mr. Wayman's letter to Mr. Conchar (v. II., p. 12; v. IV., p. 235) are entirely consistent with Mr. Wayman's explanation and with the defendants' claim. Mr. Wayman's references to the plans then being formed as those of the manufacturers clearly means that they were both his and the manufacturers', since he was trying and expected from his conferences in January with the manufacturers to get them to adopt the plans he proposed.

The letter from Mr. Wayman to Mr. Frank S. Hanley (v. I., p. 121) upon which the Government below laid stress because of the expression therein "No concerted action on this matter was taken for reasons which you well know," was explained by Mr. Wayman at the time of its introduction (v. I., p. 123), as meaning that since the jobbers had been for years trying to get the various enameled ware associations to act as a body in passing such resolution, without success, it was not to be expected that the Association would now do so.

In Mr. Ahrens's letter to Mr. Kohler (v. I., p. 254, Petitioner's Exhibit No. 147) Mr. Ahrens refers to the great amount of trouble which jobbers had with enameled iron ware, which was explained in the testimony to have been on account of the existence of "seconds."

In the letter from Mr. Torrance to Mr. Sullwold (v. I., p. 302, Petitioner's Exhibit No. 161) he refers to the bad conditions existing, due, as was testified to, to the existence of "seconds," and that he had worked to bring about the licensing arrangement for the benefit of the Standard's customers. That letter is dated June 16, 1910, so that the eight weeks during which the Government below contended that Mr. Torrance was busily engaged inducing jobbers to sign licenses would carry it back to about the first of May, when it was natural to be supposed that he was interested in working to bring about success, since his company had consented to, and on May 6, 1910, did take a license. This, however, does not at all affect the defendants' claim that it is a patent proposition and was Mr. Wayman's.

The appellants make no claim that the establishing of prices on the product of the use of his invention was not a part of Mr. Wayman's plan (v. IV., pp. 231, 232).

The Court below (v. A, p. 110) in considering whether the

prices were raised is misled into thinking that the prices were raised by referring to some correspondence between the Standard Company and one of its customers, and draws the inference that that customer had a confidential 7½ per cent. discount from the Standard Company below the carload limit price, and that this was below the published prices and published discounts.

The evidence shows that this supposed customer had never been a customer of the Standard Sanitary Manufacturing Company but had been a customer of the United States Sanitary Manufacturing Company (v. I., p. 542), and the alleged confidential 7½ per cent. discount is not a statement under oath but merely a claim made by the writer that he had had such a discount from some other manufacturer. The writer of the letter, one Collins, was on the witness stand but was not examined as to this supposed discount. The most that can be said of it is that it is a statement made by a man wanting to buy goods by which he hoped to get a cheaper price. It is in no way evidence of the fact and should be disregarded (v. I., p. 541).

In the letter from Mr. Ahrens to Mr. Murphy (v. I., p. 258; Petitioner's Exhibit No. 148), Mr. Ahrens says that he believed it was to his customers' interest to put the plan through, and that the interest of his customers demanded it. This is entirely consistent with the claims of the appellants that the dominant purpose was to eliminate "seconds" and thereby re-instate the ware in the favor of the public, and enable those dealing in it to make a reasonable profit, and to insure the consumer getting an honest article.

The testimony, references to which were made in the argument below to maintain the claim that it was a deliberate scheme "to beat the Sherman Act," do not support the contention. It merely appears (v. I., p. 73) that Mr. Jackson, at Mr. Wayman's request, discussed the legal features of the License Agreements with those present at the meetings at the Hotel Astor; (v. I., p. 83) that the proposed License Agreements had been passed upon by counsel; (v. I., p. 97) that Mr. Kohler wrote he had been advised that it was in conflict with the laws of Wisconsin; (v. I., p. 99) that Mr. Wayman telegraphed that after a consultation they were all satisfied that the pro-

position was legal; (v. I., p. 11) that Mr. Wayman wrote Mr. Kohler that the meeting for the execution of the License Agreements would be held at the offices of Noble, Jackson & Hubbard; (v. I., p. 138) that in addition to Mr. Jackson, Governor Walter Lyon, Messrs. Bakewell & Byrnes, and other lawyers were consulted; and (v. I., pp. 113, 115) that at a meeting of the Sanitary Enameled Ware Association, held October 6, 1909, a resolution was adopted instructing the Commissioner to prepare a resolution, not in violation of the law, with regard to the policy of selling concerns who resold directly to the consumer. It is impossible to see wherein any of these things support the claim of the Government. The last, which seems to be the kernel of the proposition—the resolution adopted by the Association—certainly does not refer to resale prices or to prices at all, but to the manner in which the manufacturer should deal with one who instead of acting as a jobber or wholesaler and selling to the plumber or retailer and letting the plumber or retailer sell to the consumer, himself sold direct to the consumer. The usual course of trade is for the manufacturer to sell the jobber, the jobber to sell the plumber, and the plumber to sell the consumer. For certain trade reasons this course of dealing is important. When a jobber sells direct to the consumer he violates this trade regulation and it was such a case to which the resolution referred.

The references given to show that the agreements in question restrained trade are the following: (v. I., p. 229) the testimony of a representative of the Illinois Malleable Iron Company, that not having signed the Jobbers' License Agreement he could only purchase licensed goods at resale prices from other jobbers; (v. I., p. 334) the testimony of Mr. Gilmore that he could not get licensed goods without signing the agreement; (v. I., p. 367) similar testimony from Mr. Harder; (v. I., p. 374) similar evidence; (v. I., pp. 389, 405, 415, 425) similar evidence. As to this, the defendants make no controversy since they claim the right to do what was done.

The reference to the letter from Mr. Wayman to Mr. Haff (v. I., p. 407; Petitioner's Exhibit No. 233) was evidently made under a misapprehension as to the meaning of that letter. That letter merely means that when prices were cut by jobbers who had not signed the License Agreements, the

manufacturers would urge Mr. Wayman to allow them to meet such cut.

The Government's representatives, in their argument below, apparently misconceived the cases.

Cases Relied on by the Government Distinguished.

We will not discuss all of the cases but merely refer to those upon which particular stress was laid.

In the case of *Dr. Miles Medical Co. vs. John D. Park & Sons Co.* (220 U. S., 373), the Court pointed out that the complainant had no statutory grant, such as is conferred by the *patent law*, and that while the complainant might have given the right to use its secret process under conditions, it could not, after Peruna had been made by the secret process, sell Peruna itself and attach any conditions with reference to the disposition to be made of the Peruna. That is not this case, and consequently it is not an authority in this case. This court pointed out in *Henry vs. A. B. Dick Co.* (224 U. S., 1, 39) that there was no collision between the rule against restrictions on the disposal of unpatented articles and the right of the owner of a patent through his control over the invention.

The Court's attention is directed to the fact that in the *Miles Medical Case (supra)* the Court, cited among other cases, *People vs. Sheldon*, 139 N. Y., 251, for the proposition that contracts whose sole purpose was the suppression of competition and fixing of prices are illegal. That was a case which arose under a statute of the State of New York prohibiting the fixing of prices, upon articles of prime necessity. The articles upon which the price was fixed was an article held to be one of prime necessity, and consequently the decision there rests upon the statutory inhibition. An examination of the other cases shows that in each there was some feature which brought it within the prohibition of the law other than the mere fixing of prices or partial suppression of competition.

It was the *Miles Medical Case* upon which the Court below relied for the doctrine that the agreements in the case at bar violated the Sherman Act, but the facts in the case at bar do not justify the contention that the sole object of the parties to them was the suppression of competition and the fixing of prices, nor does the *Miles* case hold that such agreements are all necessarily illegal.

In the case of *Continental Wall Paper Co. vs. Voight & Sons* (212 U. S., 227), no patent was involved, and the contract was said by the Court to be one of the worst examples of attempt to monopolize a necessary article that ever came under its view.

In the case of *Blount vs. Yale & Towne Mfg. Co.* (166 F., 555), three parties agreed to interchange licenses under their various patents, and at the same time agreed that each should continue to use its own patents and not use the patents of either of the others; and that they should not change the patterns of their door checks or make any difference in the conduct of their business. The Court, Judge BROWN, held that such an agreement was not a patent license agreement at all; that there was an expressed intention not to use the license, and that the injection of the license feature into the matter had no effect, but the agreement was to be treated just as though that feature did not exist.

It is interesting to note that the Judge who decided the *Blount Case* decided in *Brodrick Co. vs. Roper* (124 F., 1019), that the owner of a patent had the right to sell on condition that the patented article should only be used with unpatented supplies furnished by the licensor.

The Government is in error in supposing that the *Rubber Tire Wheel Case* is not applicable here. That case holds that the limitations which were imposed in that case and which were upon the patented article, were valid; but it goes further and holds that the owner of a patent may establish what is called a patent pool.

The *Henry vs. A. B. Dick Co. Case*, the *Button Fastener Case*, the *Mimeograph* and *Neostyle Cases*, and the *Phonograph Cases* carry the proposition further, and hold that the owner of a patent can impose the same restrictions with regard to unpatented articles used in connection with the patented article, or produced by the use of the patented article, as could be imposed upon the patented article itself.

The cases of the *National Harrow Co.* are not authority for the Government's contention in this case. In those cases the owners of certain patents combined to transfer their patents to a corporation under an agreement that the corporation would license them to use their own patents, and the combination was to extend beyond the life of the patent. These cases

are similar to the case of *Blount Mfg. Co. vs. Yale & Towne Mfg. Co.* heretofore distinguished.

The Government Has Failed to Prove the Allegations of the Petition and Has Utterly Failed to Make Out a Case.

Judge GOFF in his dissenting opinion said (v. A, p. 125):

> "I cannot assent to the conclusion reached by the court in this opinion. The facts established by the testimony, considered in the light of the law applicable thereto, compel me to conclude that the allegations of the petition have not been sustained."

All of the defendants answered the petition under oath, the petitioner not having waived the requirement of an answer under oath. The answer of each defendant, therefore, is to be taken as equal to the evidence of one witness which must be overcome by the testimony of two witnessss or one witness and corroborating circumstances.

Jacobs vs. Van Sickle, 127 F., 62.
Calivada C. Co. vs. Hays, 119 F., 202.
Savings & Loan Co. vs. Davidson, 97 F., 696.
Street's Fed. Eq. Pr. v. 2 p., 964 *et seq.*

Furthermore, the witness Wayman and each of the defendants have denied categorically each and every of the allegations of the petition alleging any relationship between Wayman and any of the defendants, or between the defendants, except as expressed in the License Agreements, and the written contracts in evidence relating to the purchase by him of the patents.

They stated in respect to every allegation of the petition, in the most specific and definite manner, that those allegations are untrue (v. III., pp. 444, 451, 458, 467, 477, 488, 494, 507, 510, 522, 479, 485-487, 495-497, 508, 509, 517, 518, 523, 524; v. IV., pp. 5, 6-8, 15, 16, 17-19, 194, 219).

They have denied that any defendant had anything to do with suggesting the procurement by Wayman of the Arrott, Ditheridge or Lindsay patents, or any other patents (v. IV., pp. 6, 17, 132, 133, 151; v. III., pp. 477, 485, 494, 507).

Mr. Wayman has denied that any defendant aided or as-

sisted him, financially or otherwise, in the purchase of those patents (v. IV., p. 152).

Mr. Wayman and the other defendants have denied that any manufacturer ever suggested the idea to Mr. Wayman to get up the License Agreements (v. IV., pp. 6, 17, 132, 151; v. III., pp. 494, 507).

Mr. Wayman and the other defendants have denied that the Sanitary Enameled Ware Association, or any of its members, or any of its committees, ever suggested to Mr. Wayman or threw out any hint to Mr. Wayman that he do anything toward acquiring these patents, or that he take any steps toward bringing about the licenses which he afterwards granted (v. IV., pp. 6, 17, 132, 133, 152; v. III., pp. 485, 494).

Mr. Wayman and the other defendants have asserted that the idea, that the conception, that the plan, was Mr. Wayman's own from the start (v. III., pp. 494, 507; v. IV., pp. 6, 17, 132, 133, 151, 152).

Mr. Wayman has denied that anyone had any interest, in any way, shape, form or manner, in any money which he might make out of the exploitation of these patents (v. IV., p. 133).

Mr. Wayman has asserted that no one has any right to any participation, in any way, shape, form or manner, to any of the rebates, penalties or other funds, however coming into his hands, by reason of the existence of these licenses (v. IV., pp. 205, 206, 218).

Mr. Wayman has testified that all the expenses attendant upon the acquisition of the patents, the inducing of the Licensees to take licenses, the preparation of the licenses, the jobber's licenses, price lists, and every other expense, were incurred by him alone, on his own account, and in the expectation that he would make money out of the exploiting of these patents through the License Agreements (v. IV., pp. 133, 206).

Mr. Wayman and the other defendants have denied the allegations of the petition that Mr. Wayman was an ostensible licensor, and have testified that he is the owner of the patents and granted the licenses to these defendants in good faith by reason of his ownership thereof (v. III., pp. 479, 509; v. IV., pp. 17, 194).

Mr. Wayman and the other defendants have denied that there was any agreement with any of the Licensees or any of the members of the Sanitary Enameled Ware Association to restrain, hamper or impede or block the trade or lessen competition in Sanitary Enameled Iron Ware, and Mr. Wayman has denied that he ever had any agreement to such an effect (v. IV., pp. 219, 522).

Mr. Wayman and the other defendants have denied that there was any agreement to eliminate or suppress competition, and have asserted that the License Agreements invited competition and have so testified (v. III., p. 17; v. IV., pp. 2, 17, 219, 220).

Mr. Wayman and the other defendants have denied the allegation that Mr. Wayman ever had any agreement with any defendant, or with any group of defendants, to fix the prices at which Sanitary Enameled Iron Ware should be sold, and have stated that the prices which were fixed in the License Agreements were made by Mr. Wayman, and that the manufacturers did not know the prices until they received the price book (v. III., p. 479; v. IV., pp. 19, 196, 220).

Mr. Wayman and the other defendants have denied the fixing of any of the terms of the License Agreements with any of the defendants, jointly or in groups, or with any of them together, and has asserted that they were made separately with each licensed manufacturer (v. IV., p. 220).

Mr. Wayman and the other defendants have denied that except the terms that are fixed by the License Agreements and the Jobber's License Agreement, Mr. Wayman had any agreement or understanding of any kind, sort or description with the defendants (v. IV., pp. 17, 220).

Mr. Wayman has denied that there was any agreement between the Licensees on the one hand, and himself on the other (v. IV., p. 221).

Mr. Wayman has denied that there was any other relationship existing between him and the Licensees, or any of them, other than that of Licensor of each individual licensee (v. IV., p. 221).

Mr. Wayman has denied that there is any combination or agreement between the defendants to which he is in any sense a party, or that any such agreement has ever existed (v. IV., p. 221).

Mr. Wayman has denied that there ever was any combination (v. IV., p. 221).

Mr. Wayman has denied that there is any classification of jobbers, but has asserted that under his License Agreements every manufacturer is entirely at liberty to sell to any jobber to whom he desires to sell (v. IV., p. 221).

Mr. Wayman has denied the allegation of the petition that the prices were fixed by mutual agreement (v. IV., p. 221), and has asserted that the prices were fixed by himself and that the manufacturers did not know what the prices were until they received the price book (v. IV., pp. 196, 221).

Mr. Wayman has denied that there was any information furnished by him to the manufacturers whereby they could limit their output (v. IV., p. 188).

Mr. Wayman has denied that he in any way, shape, form or manner, controlled the output or that the output was ever restricted (v. IV., pp. 188, 221, 222).

In short, every allegation of the petition purporting to show any agreement or relationship between him on the one hand, and the manufacturers on the other, or the existence of any combination among the manufacturers of Sanitary Enameled Iron Ware, has been specifically denied by Mr. Wayman and the manufacturers who testified (v. III., pp. 479, 485-487, 495-497, 508, 510, 517, 518, 522-524), and they have asserted categorically and in the most positive terms that the idea of acquiring these patents, granting licenses under them, inducing the defendants to take licenses, bringing about the taking of licenses, arranging the terms, prices and conditions, were all his work, and that none of the defendants, without his suggestion, did anything that was done.

Mr. Wayman was called by the Government and has been credited by it. He surely was not called merely to be discredited. It is familiar law that the statement of a witness binds the party calling him without a showing of some element of surprise or fraud. No such showing is attempted.

Furthermore, as above stated, each of the individual defendant has under oath categorically denied all the allegations of combination and conspiracy set forth in the petition; they have denied that they had anything to do with bringing about the licenses, and have asserted that the licenses were first suggested by Mr. Wayman, that the plan was Mr. Wayman's, and

that they merely became licensees under his licenses upon the terms stated therein.

Each of the defendants who was subpœnaed to testify by the Colwell Lead Company likewise denied all of the allegations of combinations or conspiracy, all of the facts alleged in respect thereto, and reiterated the verity of the sworn answer previously filed (Vol. III., pp. 444, 451, 458, 467, 477, 488, 494, 507, 510, 522).

If the defendants are permitted to take further testimony, they offer to disprove by the testimony of all the witnesses all of the allegations of the petition in the matters referred to, and to prove all of the denials and allegations in their sworn answers.

The License Agreements are Entirely Beneficent and Have Worked no Harm to Any One.

By their several answers all of the defendants have testified, and if permitted to testify upon the witness stand, they will swear that they entered into these licenses believing that they were for the benefit of themselves, for the benefit of the trade, the improvement of the ware, and the benefit of the consumer.

The testimony, so far as we have been able to get it, is, that the result of the licenses was the improvement of the conditions of the trade, the improvement of the quality of the ware, that the jobber made more money, that the cost to the consumer was less, that during the time the licenses were in existence (from June 1 to December 31, 1910), the business of Sanitary Enameled Iron Ware was better than ever before, that the licensed manufacturers competed in quality and endeavored to make better goods; the competition between the manufacturers and between the jobbers was as active as ever; that "seconds" disappeared from the market; that as a result jobbers had less goods returned to them, less claims made for damages and replacement, etc.; that the consumer got an honest article and what he bought and paid for; that jobbers were able to get into new territory, where they had never been able to sell before, and make a profit, and, furthermore, that no restrictions have existed since January 1, 1911 (v. IV., pp. 26-29, 30-39, 40, 42, 45, 46, 49, 50-59, 60, 61, 64, 66-69, 71-75, 77-79, 81-85, 86, 92, 93).

It is submitted that it is perfectly apparent that these license contracts are made in furtherance of the business of the parties to them; they have been unaccompanied with measures of coercion, fraud, intimidation or compulsion; they are not intended and have not been directed toward the injury of persons not parties to the contracts; they do not exclude or tend to exclude others from attempting to trade in Sanitary Enameled Iron Ware; they do not impose any burden upon other manufacturers in Sanitary Enameled Iron Ware, but they merely foster the business of the parties to them and promote the sale of the goods manufactured by them.

III.

THE COURT BELOW ERRED IN NOT GRANTING THE MOTION OF THE DEFENDANTS FOR AN ENLARGEMENT OF TIME TO TAKE TESTIMONY AND THAT THE HEARING OF THE CASE BE POSTPONED UNTIL THE TESTIMONY OF THE DEFENDANTS COULD BE COMPLETED.

A Motion was Made at the Hearing Below for the Enlargement of the Time of the Defendants to Complete Their Testimony on the Ground That They Had Been Prevented, by the Petitioner's Action in Instituting Criminal Proceedings, from Properly Presenting Their Defense.

If the defendants are permitted to give further testimony, they offer to testify, that these License Agreements are the only agreements that existed between themselves severally and Mr. Wayman, and that no agreements, other than expressed in the License Agreements, existed between themselves or between them and Mr. Wayman; that these licenses were accepted by them in the belief that by obtaining the right to use the Arrott patent they would improve the manufacture of Sanitary Enameled Iron Ware as made in their factories, or would continue to maintain its quality and improve the quality of sanitary enameled ware generally; to prove that they entered into these agreements for their own several benefit to protect their business; that there was no intimidation, fraud, coercion or compulsion of any kind exercised upon them by Mr. Wayman or by anyone to accept these licenses, and that they, in

turn, exercised no coercion, fraud, intimidation or compulsion upon anyone to accept these licenses or to enter into the Jobber's License Agreements.

As appears at various places in the record, the individuals who are defendants in this Bill have been indicted individually for the same matters, transactions and things as are complained of in the petition. The indictments were found by the Grand Jury for the Eastern District of Michigan, on the 6th of December, 1910.

The Government completed the taking of its testimony on December 22, 1910, so that at the time of the filing of the indictments most of the Government's case had been put in.

The defendant Wayman was subpœnaed as the first and chief witness by the Government, and went on the stand and testified fully, freely and frankly, and produced, for the inspection of the Government, and for admission in evidence, or admitted the genuineness of, substantially all of the Exhibits which were attached to the petition ; and in addition thereto a large number of instruments, letters and other documents which the Government deemed material to its case.

Mr. Wayman naturally did this with the expectation and understanding of himself and his associates that the Government intended to proceed with the equity suit and rely upon the decision in it of the questions of law involved. Mr. Wayman and the other defendants were entirely willing to have the Court below pass upon these questions, and accordingly facilitated the Government in every respect in the taking of its testimony.

It was claimed by the Government that the questions involved in this case had not hitherto been disposed of by a Court; though the defendants' belief is that the principles governing the questions involved here have been decided by a series of cases.

Under these circumstances the indictments were a great surprise to the defendants, because the issues involved, if open to question, are cognizable in a court of equity, and, if unsettled, should certainly first be decided in a civil tribunal.

It was believed by the defendants, and they were advised by their counsel, that answers having been made under oath in response to the subpœna constituted giving testimony

within the meaning of the immunity acts, and that accordingly the indictments had been irregularly found.

The questions thus raised were presented to the District Court in Michigan, but were ruled against the defendants by Judge DENISON. From this decision, under the Rules of Federal Practice, there was no appeal until after the trial. The trial under the conspiracy indictment took place in February, 1912, resulting in a disagreement.

In view of the warnings against the defendants testifying as witnesses, elsewhere referred to, and of the necessity of standing trial upon these indictments the individual defendants were unwilling to voluntarily appear and testify, lest by so doing they should furnish the Government with some information which might be used against them upon the said trial.

No matter how innocent a man may believe himself to be, or may be advised as a matter of law that he is, it is perfectly proper for a man to refuse to put himself in a position where what he says may tend to incriminate him if by a reasonable delay, to be granted by a court of equity, he can equally well protect himself and his property at a somewhat later date without any harm to the public.

In this case the situation was one created by the Government. The Government brought the civil suit asking for relief that would practically confiscate certain property and property rights of the defendants. While that suit is pending, and before the defendants can get it disposed of, or even present their side of the story, the Government procures the indictment of these same defendants for the same matters, transactions and things, and then says: You must go and testify in the civil suit if you will protect your property rights, because there is a Statute which permits the Attorney General to certify that in his opinion the question is of such public importance that it should be expedited. We make that certificate, and ask that the case be expedited so that we can go to trial with only the testimony put in by the Government, and such testimony as you have been able to gather without calling the individual defendants who know all the facts, and are the only persons who could possibly know all the facts, and ask that the Court pass judgment in that state of the case.

We call the Court's attention to the fact that since January 1st, 1911, out of deference to the attitude taken by the

Government, all the conditions involving any restriction of price, limitation upon the right to purchase, and all other restrictions contained in the License Agreements and the Jobber's License agreements, except payment of royalties, and as to the manufacture of "seconds," have been removed.

We submit that, under these circumstances, if the Court, upon reading the record, had any doubt as to the defenses of the defendants as set out in their answers, showing utter lack of combination and conspiracy, and only a straight license from the owner of patents to his Licensees, or any doubt as to the beneficent or reasonable character of the contracts, should have enlarged the time of the defendants to take their testimony to such date as they could freely do so without prejudice by reason of the pendency of the indictments.

We submit further that under these circumstances the Court below should have given the fullest consideration to the answers of the defendants as evidence in their behalf, while it does not appear that they were considered at all. Under the rule the sworn answers were evidence on behalf of each of the defendants, not to be overcome except by the evidence of one witness and corroborating evidence or two witnesses; but the Court below does not appear to have considered them at all.

IV.

THE COURT BELOW ERRED IN HOLDING THAT THE GOVERNMENT HAD ESTABLISHED A CASE ENTITLING IT TO AN INJUNCTION AGAINST THE DEFENDANTS.

HERBERT NOBLE,
HENRY D. ESTABROOK,
HARTWELL P. HEATH,
Of Counsel.

APPENDIX A.

Charge of the Court Upon the Trial of the Conspiracy Indictment.

GENTLEMEN OF THE JURY: After listening for two whole days to the argument of counsel with great attention, so far as I could observe, and much patience, you are approaching the end of your duties in this case. I will ask you to listen to me for a few moments, as carefully as you did to counsel, and try to bear in mind what I have to say to you on this subject. Some things were said to you by counsel, naturally, in the course of a long argument, which perhaps did not bear very directly on the real merits of this controversy. My duty of course is to call your attention to those important and controlling matters which should guide you to a right conclusion, and to state to you as briefly and as clearly as I may the principles of law which are applicable to the different phases of facts, as you may find such facts to be.

The evidence has taken such a wide range, and the arguments have followed the evidence of course, that I want to call your attention, in the first place, to the real question which you have to decide here, the ultimate question. This is a criminal case, and what you have to settle in your own minds is whether or not these defendants are to be held guilty of a crime. You are not to trouble yourselves, and you ought not to trouble yourselves, with any question relative to the civil responsibility of these defendants. More or less, as the case has gone on, has been said either directly or indirectly in your hearing about a suit in equity for an injunction. You are not to be disturbed or to be in any way influenced or affected by the question whether or not these defendants have been enjoined or should be enjoined, or are liable in damages. This is a *criminal* matter, and the sole question for you to consider is whether they are guilty of the crime charged against them. You are not to disturb your minds about the general policy of the Sherman Law, so called. You need not trouble yourselves in

trying to settle whether it is expedient or inexpedient; you are to find under this evidence, and under the law as I shall give it to you, whether these defendants are guilty of the crime charged upon them and nothing else. You are not to convict men whom you believe innocent, if you do believe them innocent, for the purpose of serving as an example to anybody at all. To allow your minds to be influenced by any such consideration, when men are on trial for a crime, would be shocking; and if anything has been said to you in the argument which would naturally lead your minds into such a channel, dismiss it from your minds.

Nor are you concerned, gentlemen of the jury, in this case with what is called in common parlance a trust. You need not enter upon the difficult economic question which is involved in the very suggestion which I am making to you. These men are not charged with being in an unlawful combination or trust; they are charged with a criminal conspiracy. So that you have only to determine whether the defendants are guilty of the crime charged against them here and not of something else. And the crime charged against them exclusively is the forming of a conspiracy to restrain trade and commerce among the several states. That is the ultimate question that you must settle; and your minds should be directed to that from now until you reach your verdict and not to any of these other lateral lines of inquiry.

Now I say I am going to call your attention to matters that ought to control your judgment on this ultimate question, and to state to you the law which you shall take from me and not from counsel. Your duty is to follow the law as I give it to you, and to find the facts as in your honest judgment, in view of what I am about to say to you, and to determine what they are, and then apply the law to those facts. If I am mistaken in that I am responsible and you are not.

Some days ago I directed the acquittal of a number of these defendants, you will remember, because there was no evidence at all from which it could even be inferred that those men had had any part in the conspiracy which the government now alleges to have been formed prior to April 8th, 1910. Three of these men whose acquittal I directed, Mr. Ahrens, Mr. Duryea and Mr. Dawes, insisted that in spite of my ruling their case should be submitted to

you. You recall that very well. They refused as I may say, to accept an acquittal at the hands of any body but a jury in this case. No other evidence has been put in to affect their case than that which was put in when I directed their acquittal, and I desire you to bear that in mind; nothing has come in to change the situation since they voluntarily submitted their rights to your consideration. The other defendants now in the case are The Barnes Manufacturing Company, The Humphryes Manufacturing Company, The L. Wolff Mfg. Company, McCrum-Howell Company, McVay & Walker, a corporation, the J. L. Mott Iron Works, the National Sanitary Manufacturing Company, the Standard Sanitary Manufacturing Company, the Union Sanitary Manufacturing Company, A. Weiskittle Sons Company, a corporation, and the Wheeling Enameled Iron Company; and the other defendants, besides those three I mentioned, individual defendants are, Torrance, Barnes, Gates, Borden, Weiskittle, McCrum, Hoelcher and Wright.

You heard me say at the close of the government's case, what I thought about the sufficiency of the evidence to convict any of these people but that I deemed it my duty to submit the matter to you. Now I am submitting it to you absolutely. You must decide on the facts under the law as I give it to you, uninfluenced by any views of mine, whether these men and these concerns are guilty or not. Your recollection of the testimony, your judgment as to the inferences which are to be drawn from it, and not my ideas as to these matters, are to govern you. I am submitting it to you, and I want you to decide it on your own consciences, and with you is the responsibility and not with me, and to pay, if you can do so, no attention to my views on the subject of the sufficiency of this evidence, as expressed the other day. I said to you that the defendants stand charged with a conspiracy to restrain interstate commerce and trade. The statute under which the indictment is brought declares this: "That every conspiracy in restraint of trade or commerce among the several states is illegal; that every person who shall engage in such conspiracy shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprison-

ment, not exceeding one year, or by both said punishments in the discretion of the court."

We are here on a very serious matter, gentlemen, which deserves your very careful and most candid consideration. There are four counts in this indictment, and on each of them the sentence which the statute defines may be imposed. You can readily see this is a matter of great importance to all these defendants.

I say the indictment is in four counts or paragraphs. The counts allege a purpose to restrain the interstate trade of the manufacturers—two of them do—two of them allege a purpose to restrain the trade of the jobbers of plumbing supplies. In each count it is alleged the defendants sought to work out this conspiracy claimed by means of fixing non-competitive prices, and greatly increased the prices on enameled ware, fixing discounts, selling enameled ware at these prices, and under non-competitive conditions, and of refusing to sell to jobbers who did not come into the arrangement. In the count with reference to jobbers it is further alleged in substance that it was sought to get all the independents in, all independent manufacturers, and to prevent jobbers from buying ware from any except licensed manufacturers. In two of the counts, one each, that is, the first and third, one as to the manufacturers and one as to the jobbers, there is the further averment which has turned out to be of such importance in this case: That the license agreements were a device or subterfuge or cloak for concealing the illegality, as it is claimed, of this arrangement. Now, under an indictment containing different counts where several defendants are involved as in this case, varying results may be reached of course, according as the jury may determine. You may convict all or you may convict some; you may acquit all or you may acquit some. You may find guilty under one count and not under another, or you may find generally guilty or innocent under all the counts, and lest I forget further to mention that, I mention it now in speaking of the indictment.

A good deal has been said to you of course about a conspiracy and what it is. Now, for the purposes of this case, you may take this as the proper definition: A conspiracy is an agreement or a combination of two or more persons to ac-

complish by concerted action a criminal purpose. There must be concert of action ; there must of course be two or more to make a conspiracy ; one man can't conspire by himself ; and the object of the arrangement must be criminal. Under the law of the United States, which in that regard is undoubtedly beneficent, no one is punishable for a conspiracy unless, after the formation of it, some act is done by one or more of the conspirators for the purpose of carrying out the object of the conspiracy. Merely to make an agreement for a criminal purpose, if nothing is done under it, is not punishable under the laws of the United States, however it may be under the laws of some less benign jurisdictions. Something must be done to effectuate or to carry out the illegal criminal purpose before a man can be punished, and that act is called, if it is done, an overt or open act. You have heard a good deal here in discussion by counsel about overt acts. Well, that is what it means. It is simple enough when you get down to it. You have got to do something to carry out your evil purpose, if you have formed one, before you are punishable Now what follows from that? Until an agreement is reached or a determination is formed to do this criminal thing obviously nothing can be done to carry out the agreement. The very idea underlying the statute necessitates the formation of the agreement before something can be done to carry it out. In other words, the agreement or criminal combination or meeting of minds must have taken place before the act to effectuate it can possibly be performed. You must have your conspiracy, in other words, before you can have, in the nature of things, your overt act. Now that is a very important matter, gentlemen, as applying to this case, and we are only concerned with this case. Under this indictment which avers that the overt act, the act to effectuate the alleged unlawful agreement, took place on April 8th and the defendants thereafter met at Mt. Clemens in this district. There can be no conviction of these defendants unless a conspiracy to restrain interstate trade had been entered into by them or some of them before that date. Now that at once takes out of the case as an element of the crime, what under another indictment you might think was of very great importance, namely, the agreements which were signed on May 6th in New York. The fact, if you conclude that it is a fact, that you should in another

case conclude even that it were a fact, that those agreements signed in New York on the 6th of May, what are called the license and jobbers' agreement were unlawful, would not warrant a conviction under this indictment, unless you further found that a definite agreement of the minds in an unlawful purpose had been made prior to April 8th.

Now something was said yesterday, probably inadvertently, that this consideration was technical. It is anything but technical, gentlemen. Do not be deceived for an instant about that. A person charged with crime in this court must be convicted if at all, under the indictment and not under some other indictment. You need not dwell on that; you are intelligent men; you know the law as well as I do in regard to that; everybody knows the law in regard to that; for one of the safeguards, thank God, our system throws around people charged with crime is that they have got to be convicted if at all of the crime they are charged with and not of some other crime. Now in this situation, and I have tried to use very simple words in explaining these preliminaries to you, what are the claims of the parties here?

The claim of the United States is and must necessarily be, as I have just explained, that prior to April 8th, 1910, these defendants or some of them, entered into a definite agreement; that their minds met as we may say: that this agreement was unlawful and in restraint of interstate trade because its purpose was to fix prices and to do away with competition, and because the license to use the patent dredgers was simply a cover, a device or subterfuge; that what was done at Mt. Clemens was done to effectuate or carry out this unlawful purpose which had been reached; in other words, was an overt act, as I have explained to you, and that the question of intent, of conscious criminal purpose has no place in this case. That in brief is the contention of the United States. And on the part of the defendants the contention is precisely the opposite. The defendants claim that no definite agreement at all was reached prior to April 8th; that the agreement reached and signed on May 6th was a lawful agreement which might properly be made, in view of the patents, or the license to use them, that what was done at Mt. Clemens was not an overt act, was not an act to effectuate an existing agreement, but was something done in

the formation and as a step towards the settlement of the terms of an agreement which afterwards was entered into in New York on May 6th. Lastly, their claim is that whenever these agreements were made that the defendants were not actuated by any criminal purpose or evil intent.

Now under the indictments and the evidence, four matters ought to be considered by you, as you will see from what I have just stated, and your conclusions on which ought to determine your final conclusion as to the ultimate question of guilt or innocence. Let me state them to you. I think I can best aid you to reach a just result in this case by stating the matter as I am about to state it; it is the orderly and logical way in which you should reach the ultimate question. The first question which you ought to determine, which you ought to take up and settle, therefore, is this: Was any agreement actually formed by the defendants or by any two or more of them prior to April 8th, 1910?

The second question is this: Was what was discussed and done after April 8th at Mt. Clemens something done to effectuate and carry out an existing agreement or something which was a step towards the reaching of the agreement contained in the papers or evidenced in the papers and signed on the 5th or 6th of May in New York?

The third question is this: If there was any agreement formed, as alleged by the United States, was it an unlawful agreement?

And the fourth question is, whether there was any criminal intent present in the minds of the defendants when they reached, if they did reach, prior to April 8th an agreement which you may conclude after the event was an unlawful agreement.

Now, to discuss these four questions in their order, as I have stated them: Was any agreement reached by these defendants or by any two or more of them prior to April 8th, 1910? In this regard, the United States relies upon the fact that certain documents were signed by some of the defendants during the month of March, and claims that from the fact of the signatures to such documents, and the other evidence in the case, you should conclude that prior to April 8th the minds of the defendants, or some of them, had actually met in the agreement formed for the

purpose of restraining interstate commerce by the means I have spoken of.

The defendants on the other hand claim that these documents simply were tentative or preliminary and that no agreement was reached at all by any of the defendants prior to the Mt. Clemens meeting.

Now, gentlemen, mere discussion or tentative arrangements are not enough to warrant you in finding that the minds of the defendants or some of them had met prior to April 8th in any unlawful agreement. In order to find that such an agreement or meeting of minds had taken place there must have been some definite decision on their part to do something unlawful and an agreement must have been reached which contained the element of illegality. Mere discussion or negotiations leading up to the agreements of May 6th are not enough to constitute the formation of an unlawful agreement prior to April 8th. There must have been something more than consideration and negotiation to warrant you in finding that a definite agreement or meeting of minds had taken place, whether it was lawful or unlawful, prior to April 8th. As I have stated the existence of the agreement of May 6th is of itself not enough to warrant any conviction of these defendants. Those agreements as well as much of the testimony which has been let in, has been admitted for the purpose of throwing light, if it does throw light, on the question whether if the minds of the defendants or some of them had definitely met on any proposition prior to April 8, that agreement was unlawful. That is why a great deal of this evidence has been let in : To throw light, if it does throw light, on whether or not an agreement, if there was one reached prior to April 8th, was in your judgment and under the charge I am about to give to you, an unlawful agreement and for no other purpose. Now you must bear in mind several matters in disposing of these very important questions in this case.

What elements in the arrangement ultimately reached are they which the United States insist are unlawful ? No claim is made finally in the arguments that it was unlawful to license the defendants to use the patent dredger. No such claim could be made. A man who owns a patent may make a license or an agreement to let you or anybody use it. That is not the

point the government is making here. The point which it makes is that the fixing of prices and the attempts to restrain in some other way competition, that is the vice which is unlawful.

Now, what was under discussion at Mt. Clemens? what did these people go there for? The testimony on all this is perfectly undisputed; they went there to discuss the question of prices and discounts and terms of sale. There is no dispute about that in the evidence. The very thing which the government alleges their minds had met upon in an unlawful way prior to April 8th. This agreement which is talked about as the basis of the claim that a definite unlawful agreement had been made has been read to you so often I do not know as I need to dwell upon it at much length, and the testimony is entirely undisputed. A meeting was had of some of these men, four or five of them, in Chicago, to discuss this general question of the license agreement which had been under consideration in February, on the 2d of March; and, as the testimony shows, and it is not disputed, no progress had been made at that meeting, and the men had gone away, and that night Mr. Wayman drafted or outlined this agreement, which is called the March 3d agreement, and the next day had it typewritten and took it to Mr. Hoelscher to get him to sign it, and then took it to others. He testified it was purely a preliminary agreement, and an attempt to get something done, as he said, to get something started along the line they had been talking about. There is no dispute about that. Nor is there any dispute that he said to all the men who signed it that it was only tentative, and was with a view of getting the matter in shape, and to one of the men he wrote a letter to that effect, at his request. And what is the agreement? He did not sign it; but it is an agreement they would execute with Wayman as licensor; an agreement for the manufacture of enameled ware under the following United States Letters Patent, various patents covering pneumatic dredgers, to be enumerated in detail, and such additional patents as may come into his possession, and certain agreements as to terms and conditions as to selling prices of the licensed ware were to be established by a price committee, and resale prices to the jobber were to be figured in a certain way, and rebates and so forth were to be figured in a certain other way, and certain

schedules which were not then adopted, and certain discounts were to be embodied. Then, having gotten some signatures to this matter, he went on and called a meeting of the Enameled Ware Manufacturers' Association in New York on the 29th of March, and there certain other documents were signed, which it is claimed by the government show a meeting of the minds had already taken place, and one of them recites that "a proposition is pending for a license agreement and a resale price for the benefit of the jobbing trade, and whereas, long time contracts are a menace to such proposition, we the undersigned manufacturers of enameled ware hereby agree, etc." which said agreement was referred to a special committee of five. The testimony of Mr. Wayman is not disputed. There is no dispute about it. The documents almost speak for themselves, but it is for you to say whether you can find upon this evidence that prior to April 8th, when this committee met at Mt. Clemens and began to discuss these elements which the government insists are unlawful, whether they had met in any unlawful agreement prior to that time. Now I did not understand counsel in the opening of his case to take this position, but whether I understood him correctly or not that it is the position which the government now takes. Several of the persons who signed these agreements, if they are agreements which I have just been referring to, are not indicted here. Your attention was called to that yesterday, and I think properly. The Blairsville Enameled Ware Company, who signed on March 3rd, the agreement of March 3rd, and signed both the resolutions at New York. The Clymer Manufacturing Company who signed the resolutions in New York, and several individual defendants, several individuals who are not indicted; and whereas, the Kerner Manufacturing Company and Colwell Manufacturing Company, McVay & Walker did not sign, at least the Colwell and McVay & Walker did not sign anything, and the Kerner Manufacturing Company signed one of these resolutions. Now that it is the undisputed evidence in this case, gentlemen, and it is a very important point as bearing on the question whether the contention of the government as now made is sound. If you conclude that it is not, and that before these men went to Mt. Clemens there had been no unlawful agreement reached at all, that the whole matter was in a stage of negotiation and consideration

and debate, then it is your solemn duty to acquit these men under this indictment. On the other hand if you find that the contrary is true, in view of this evidence, then you should go on to consider other matters which I will state to you. But this lies at the very foundation of this case, and if you are not convinced beyond a reasonable doubt in view of this testimony that an agreement had been reached by these defendants or some of them prior to April 8th to restrain trade, I say, unless you are convinced beyond a reasonable doubt of that, you stop the case right there, and do not trouble yourselves with anything else in it. If you are so convinced, then you go on to consider what I shall next say to you.

The second question which I stated above, whether or not what was done at Mt. Clemens was something done to effectuate the object of an existing unlawful agreement or whether it was an attempt at or in the process of reaching an agreement embodied in the document of May 6th. If there was a conspiracy already formed, if you are convinced beyond a reasonable doubt of that and these were acts done to effectuate that conspiracy, then there was an actionable offense. But if not, as I have said, overt acts, if what was done at Mt. Clemens was only a step in the process of reaching this unlawful agreement, then it cannot be an overt act within the meaning of the law, and this court would be without jurisdiction to proceed further in the case; we have no right to be here, and the only right you and I have to pass upon this question is whether what was done in Mt. Clemens was an act done to effectuate an existing unlawful agreement or whether it was not.

Now then if you should conclude that their minds had met, or the minds of some of them had met to the extent of forming a purpose which was unlawful, unless what was done there was something other and further than negotiating about that thing, unless it was something done to effectuate the object of the conspiracy already formed, you see, you would not be at liberty to convict and this court would have no jurisdiction. Now it is not for you to speculate, it is not for me to speculate. It is nothing to us why this was brought in this district and not somewhere else. Some allusion was made to that yesterday; it is here and we have got to treat it as it is, and treat it honestly and fairly and not speculate as to motive; it is

nothing to us; and I say to you again, if you are not satisfied these acts done in this district were done to carry out and effectuate the purpose of an existing unlawful agreement, you must acquit; stop there.

Now the third question, passing this, and I hope I have made myself clear on that, is whether the agreement, if there was one, was an unlawful agreement. Now from the beginning to the end of this matter, so far as these papers go, and we have nothing but the papers and Mr. Wayman's testimony to go by on this subject, the scheme embodied the license to use patented dredgers in making enameled iron ware. There is no dispute about that. There cannot be under these documents. It is claimed here that the sole purpose of this arrangement,—claimed by the government—was to fix prices and to interfere with proper competition. It is for you to say, if you come to this question, whether that is true or not, but you will bear in mind—you cannot help it—that from the beginning of the whole negotiations the testimony shows, beginning one or two years before, the question of getting rights under these patents had been in the minds of some or all of these men. And one avowed purpose of all the documents, so far as they can be said to be agreements at all, was to license the use of these patented dredgers.

Now a very large part of the testimony, I think most of it, has been directed towards matters in this connection which may or may not aid you in reaching a conclusion; if you reach this branch of the case at all; I let it in in the hope if you did come to it, it might help you but yet there has been so much of it I do not know but that it is confusing rather than helpful—that is one of the troubles of a long case, to know just where to draw the line between helpfulness and confusion. The rules of law applicable to this situation are not so very difficult; they are simple enough, and I am sure you can carry them in your minds. A restraint of trade, a restraint of competition, are not phrases which are used interchangeably under the Sherman Act. It may be difficult to know—it is difficult for a court to know, just where the line should be drawn. There is no doubt about that. And it is difficult for the jurors to follow the lines which the court cannot lay down with entire clearness; but there is no doubt that there may be some things which in

in a way may be subject to restraints of competition which do not amount to restraint of trade under the Sherman law. An agreement whose sole or whose dominant flat purpose is to control prices and restrain competition would be unlawful, especially if by it the public were injured. But on the other hand, as I say, there may be some reasonable restraint of competition amongst producers which does not amount to restraint of trade under the anti-trust law. And the agreement made by the owner of a patent to license any other person to use his patent may lawfully contain whatever the licensor or owner insists upon by way of price arrangement or discounts, or resale arrangements and is under our law monopoly. Of course we all know that. He can do what he likes with his patented property, and if he says you may use it on such and such terms, then you may use it on such terms or not at all. So the law is he may impose such restrictions as he likes on the prices of goods that are to be made under the patent. Now those two lines of cleavage are reasonably clear, and they are enough I think for the purposes of this case, without going into the involved questions which might be properly discussed; but the point is that a patent license agreement may contain terms which under the Sherman Law an agreement which was not a patent agreement might not contain lawfully.

Now the evidence here is undisputed that in the early part of 1910 this Arrott patent you have heard so much about, had been adjudicated valid by the highest court in the United States in the region in which it arose, in the state of Pennsylvania, in the Third Circuit, and you must take it, and I must take it to have been a valid patent at that time. Otherwise there is no security to property under judicial decisions. That is plain enough. The defendants in their negotiations about this matter had a right to regard it as a perfectly valid patent, a basic patent. You have heard the opinion read of the Circuit Court of Appeals of the third circuit, and that is binding on us. Now there cannot be any dispute under this proof that it is a valuable patent; I do not say how valuable; that is plain enough. Now following that the public hadn't any right to make enameled ware except with the hand dredge unless the owner of the Arrott patent chose to license them. You have heard the testimony about the infringement suit,

and so forth. There is no dispute there of any consequence. Now, then, what follows? Nobody could use that without a license, or else be subject to infringement suits and payment of damages, except the owner. Now, the claim of the government is, and I am going to state it as fairly as I can, that this license arrangement, if you find it was agreed upon, as I have said, prior to April 8th, was a mere cover or device or subterfuge or cloak to hide a present unlawful purpose and nothing else, with the purpose of stifling competition, and so forth. Now, if you are satisfied beyond a reasonable doubt that is so, in view of all this testimony, then you would be at liberty to find that the arrangement was an unlawful arrangement if you find that it had been formed before April 8th.

On the other hand, if you are not so satisfied beyond a reasonable doubt, then you can find it was an unlawful arrangement. In other words, if you are convinced—or, rather, I will put it negatively—if you are not convinced beyond a reasonable doubt that the owner of the patent, for the purpose of exploiting his patented invention, in due course made this arrangement, there is no offense committed. But if you find the sole purpose was the other one, an evil purpose to control trade and restrain it and restrict it and so on, and this was just a cover; these men did not want to use the patent, then of course it would be, I charge you, an unlawful arrangement.

I need not rehearse the evidence to you on this subject; it was rehearsed fully yesterday. And you know just as well as I do all there is to the whole matter in this regard. It was a valid patent, and it was to some extent concededly a valuable patent. The men used it when they got the right; the question is whether it was used as a subterfuge, a device, a mere cloak to hide an existing unlawful arrangement.

The next question is this: Was there a criminal intent in the minds of the defendants when they reached, if they did reach, prior to April 8th, an agreement, which agreement under the evidence you may conclude to have been an unlawful agreement. This case presents a rather singular situation by reason of the great difficulty in which business men and lawyers have been placed by the so-called Sherman Act. In general it is perfectly true that one must be held to intend

the legal consequences of his acts. We all know that. If a man does that which he ought to know the law forbids, he cannot excuse himself by saying he did not intend to break the law or that he did not know the law forbade it. But the question here is so complicated by the uncertainties of the Sherman Act, as to the exact scope of the act under which this prosecution is brought, and especially so when these agreements were made two years ago, and it is complicated by the fact that the agreement was, at least in part, a patent license agreement, if not more then at least in part, and in view of all those difficulties I charge you that the matter of intent is of great importance in this case. And we are trying this case, as I said before, on the fact and on the law and not on some other fact or different indictment. Now before you can find the defendants guilty in this case, you must find beyond a reasonable doubt they acted with a corrupt criminal intent, if they acted at all, in making this alleged unlawful agreement, and in determining that intent you should take into consideration all the circumstances surrounding their actions, such as the usefulness of the patent, if you find it to have been useful, the interest of these men in securing licenses to use it, the evidence bearing on prices which has been so much discussed here, the request of some of these defendants, or one of them, that the papers be sent to Washington at once; the sending of the papers to Washington; the testimony as to what took place afterwards when a representative of the Attorney General, which is undisputed came to New York and went over the matter, and what he said about it. You have got to take all those things into consideration, gentlemen of the jury, in order fairly to determine whether these defendants, when they made the agreement, if they did make one, that was unlawful, prior to April 8th, were actuated by a criminal purpose. They are charged here with having corruptly entered into this conspiracy—a very serious offense and the element of intent of criminal purpose under circumstances such as these—and they are peculiar circumstances—must be settled by you clearly beyond a reasonable doubt in your mind before you can convict these men. For the jury to do otherwise in a case of this kind would certainly shock the conscience, because they are not charged with civil liability here, but with corrupt, criminal conspiracy.

So you see, with reference to this last point—and it is of importance to you—I am seeking only to mention to you those matters which ought to be of controlling importance in reaching your conclusions in this case. Even if you were to find, as the government claims you ought, that an unlawful agreement had been entered into prior to April 8th, you ought not to convict these men unless you are satisfied beyond a reasonable doubt they had a criminal purpose. What is conspiracy? It is an agreement to effectuate by concerted action a criminal purpose; it is an essential element of this crime if it is a crime here, and you ought not to lose sight of it. Now let me, at the risk of being very tedious, tell you what a court ought to tell every jury, no matter who the men charged with crime are, it is one of the protections the laws of this country has wound around the defendants, and the judge is bound, whether they are men like these or whether they are the meanest and most miserable offenders, to express the law in this regard to the jury, and in this case I think I ought to do it with some emphasis: The law presumes the defendant innocent of the crime of conspiracy charged in the indictment. The law presumes these defendants innocent. This presumption is in the nature of evidence, which you must consider and weigh in determining the ultimate question of guilt or innocence. The presumption continues not only here but while you are in the jury room and until you reach the final conclusion, and the burden is on the prosecution to overcome this presumption beyond a reasonable doubt as to every essential element of this offense, and I have pointed out to you what are the essential elements of this offense, in order to reach a just conclusion. And if you are not satisfied this presumption is overcome, you must acquit, as you well know. The mere presumption of innocence, as you know, in some cases, is enough, without any evidence, to warrant a jury to acquit. Some times it is the only protection a man unjustly charged has, as you well know. What are these elements; I have stated to you an agreement definitely reached before April 8th, 1910, first. Second, were the acts in Mt. Clemens acts tending to the formation of this agreement or were they acts for the effectuation of this agreement; third, it must be an unlawful purpose whose main dominant object was to restrain

trade, the license being a mere subterfuge. Fourth, such an agreement must have been formed with criminal intent.

Now I say reasonable doubt, by that is not meant a captious or imaginary doubt ; you have sat on juries enough to know what that means ; it is a reasonable doubt as your conscience and intelligence leads you and guides you. Now if as to any of those essential elements, as I have stated, you have a reasonable doubt you ought to acquit. In other words, before you can convict you must all of you be convinced beyond a reasonable doubt there was an agreement reached before April 8th ; that the acts done at Mt. Clemens were acts done to effectuate that agreement and not in the formation of another agreement ; that the agreement as formed was an unlawful agreement, notwithstanding the patent matter ; and that it was formed with a criminal purpose. The defendants cannot be convicted on suspicion or on evidence which in your mind is reasonably doubtful or uncertain, or if in your minds the evidence is capable of different interpretation, one of which is consistent with innocence, you ought not to convict, as you ought not to in any case, and I am not laying down any law here different than governing any case, although I am emphasizing it, because I think the defendants are entitled to such consideration. The evidence on each of the essential matters spoken of must in your minds, beyond all reasonable doubt, overcome the presumption of innocence and must exclude every other hypothesis except of guilt, and if the evidence does not do that it is your duty to acquit.

Gentlemen, I hope I have made this matter plain to you. I have tried to be as brief and as clear as I could. You have listened patiently to all this long trial. Now, follow if you can what I have said and go to your room intent on following out the law as I have given it to you, work out the lines of evidence as I have presented them to you, and do justice. Follow an officer.

Appendix B.

THE DISTRICT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

THE UNITED STATES OF AMERICA, Complainant, vs. STANDARD SANITARY MANUFACTURING COMPANY, ET AL., Defendants.	Nos. 5163 and 5164.

The demurrers specify nine grounds, but these may be grouped into two classes.

First, it is said that the individual defendants (except the five alleged to have met at Mount Clemens) are not shown to have done any unlawful act within this jurisdiction.

The real question underlying this objection is not open upon the demurrers. The indictments allege, in so many words, that the defendants formed the combination of the conspiracy "at and within the said Eastern District of Michigan." Under such an allegation the question whether the acts of the defendants make them subject to prosecution in this District cannot arise until the trial.

The other proposition is that no act is alleged with sufficient particularity except the making of the license contracts, and that such contracts are so *prima facie* that a reliance upon them makes the indictments bad.

Reading the entire counts which refer to those license contracts, it seems to me clear that the controlling question will be as to the character of these contracts.

If it develops that they were made in the due course of exploiting a patented invention then they were not unlawful, although they might have restrained competition; but if they were sham, and a mere subterfuge for evading the laws against

combinations, they will constitute no defense to a prosecution (Rubber Tire Wheel Co. vs. Milwaukee Rubber Works Co., 154 Fed. Rep., 358, C. C. A., 7; Indiana Manufacturing Company vs. J. I. Case Co., 154 Fed., 365, C. C. A., 7).

These indictments do not, in so many words, say that the license contract was a sham or a subterfuge, but they say that it was adopted for the purpose of carrying out an unlawful combination, or by way of preparing a pretended defense to any prosecution. I think these allegations are equivalent to saying that the license was not given and taken in good faith dealing with a patent law monopoly, but was rather a mere subterfuge, and so I think the allegation sufficient.

As to those counts which do not refer to the license contract: I think it probable that the general terms of the indictment are sufficient; but if there is any question on that point, it will do no harm to continue it until the trial, inasmuch as some counts are, as I have above concluded, sufficient, and all refer to the same transaction.

An order will be entered overruling the demurrers in both cases.

ARTHUR C. DENISON,
U. S. District Judge.
Sitting by designation.

February 9, 1911.

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Office Supreme Court, U. S.
FILED.
OCT 15 1912
JAMES H. McKENNEY,

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 554.

STANDARD SANITARY MANUFACTURING CO. ET AL.,
Appellants,

vs.

THE UNITED STATES OF AMERICA.

REPLY BRIEF ON BEHALF OF APPELLANTS.

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Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 554.

STANDARD SANITARY MANUFACTURING COMPANY ET AL.,
Appellants,

AGAINST

THE UNITED STATES OF AMERICA.

REPLY BRIEF ON BEHALF OF APPELLANTS.

The brief of the United States in this case does not take up the propositions advanced by the appellants categorically, but states the Government's position independently, and only inferentially controverts appellants' points. Accordingly, in this short reply we shall merely point out the reasons why we contend that the position taken by the Government is not sound, and shall not attempt to call attention to all the inaccuracies in the Government's brief; neither shall we enter into any competition in the use of expletives.

An examination of the brief for the United States shows that many questions of fact which the Government once considered of controlling importance and which it expended much time and money in an effort to establish, are now conceded to be substantially as contended for by the defendants, and so are sought to be shrugged aside as immaterial.

It is contended on behalf of the United Sttes that "In legal theory no distinction can be made because of differences

of degree in the utility of patented tools. Therefore, whether the Arrott dredger is an essential or only a useful tool is an immaterial question in this case" (p. 51).

The evidence shows that the Arrott invention is of very great value in the art to which it relates, and we cannot admit that its importance in the art can be brushed aside as immaterial in considering patent law enacted to subserve a broad public policy by which large ends are to be attained, and therefore to be construed so as to give effect to a wise and beneficial purpose, the moral elements of which appeal to the normal man.

Moreover, the value of the invention has its further bearing upon the question of good faith.

The wise and beneficial policy of our Government in encouraging inventions has developed the inventive genius of our people. And, equally, inventions have contributed to an immeasurable degree to the prosperty and growth of our industrial life. It is conceded that both the Sherman Act and the Patent Laws were passed to advantage the public.

In the brief on behalf of the United States it is tacitly assumed throughout the argument that the business of making and marketing enameled iron ware, prior to the license agreements here in question going into effect, was ideal from the standpoint of the public. As the testimony shows, this is just the reverse of the facts. According to the contention on behalf of the United States the effect of the Sherman Act is to impose the obligation upon merchants not to do anything resulting in any form of combination to remedy trade conditions, however much such conditions may tend by fierce competition to a spot where all business is unremunerative and even tend to its destruction; ignoring, at the same time, the effect and the harm done to the public in the depreciation in quality of goods manufactured under such conditions and the injury to the community resulting from the tendency to destroy enterprises.

We deny this principle utterly. It is not true under the great body of the common law evolved out of the experience of centuries of business dealing among business men. It is not true under the Sherman Act interpreted according to the purpose of those who framed it, argued it, and secured its passage. It is no longer true according to the decisions of

this Court, since the separate opinion of Justice BREWER in the *Northern Securities Case* receding from his position in the *Trans-Missouri Freight Association Cases* and since the decisions in the *Standard Oil* and *Tobacco Cases*. It is not true tested by any principle of right or wrong. We insist that injury to the public, as shown by the facts in every individual case, taking into consideration the situation of the parties, the needs of their business, and the dominant purpose in their minds, is the test by which the validity of an agreement among competitors is to be judged. Thus tested, the arrangement complained of, in the case at bar, violates no intendment of the Sherman Act, was beneficial to the public, as well as to the parties to it, and was attained by no prohibited or unfair methods directed against competitors, and amounted simply to trade regulation. The arrangement placed competition on a higher plane among those parties to it. The goods sold were what they purported to be. The profits to the manufacturers and jobbers arose from the elimination of the sale of defective ware, which had formerly been returned causing great loss and expense to all parties. The prices received were substantially those established by competition. The goods manufactured by the use of the invention were of a uniformly better quality. The evidence shows that it was by the use of this invention only that uniform excellence could be secured. The arrangement did not interfere with manufacturers who did not take licenses. The Court below stated that "Such concerns * * * make and sell the ware in large quantities in competition with the licensed manufacturers" (v. A., p. 118).

On page 2 of the brief filed on behalf of the United States it is stated that Judge GOFF wrote no opinion. Upon reference to the record it appears (v. A., p. 125) that he said:

> "I cannot assent to the conclusion reached by the Court in its opinion. The *facts* established by the testimony, considered in the light of the law applicable thereto, compel me to conclude that the allegations of the petition have not been sustained." (Italics ours.)

On the same page the two questions are inaccurately stated. As stated, the questions are academic because "all manufac-

turers " did not take licenses, and the conditions upon which the use of the invention was allowed applied only to the articles made by its use, and not to the articles *per se*. Similarly in the second question "all the manufacturers of an article" does not apply to this case, and further, competition was not destroyed.

On pages 17 and 25, what is stated concerning the assignments of the dredger patents to Wayman should, if material, be considered in view of the fact that the assignments were made pursuant to options acquired in December, 1909 and January, 1910, and that the written assignments were prepared in March, 1910 (v. 1, pp. 27, 32; v. 4, p. 151).

At the time the letter referred to in the brief for the United States (p. 21) was written, inquiring if the addressee had any patents which he would be willing to assign, Wayman had in mind the standardization of the articles of sanitary enameled iron ware as to design, etc., and he had acquired options on some patents for that purpose. He afterwards abandoned that idea.

What is said (pp. 21 and 22) relative to the agreement of March 3rd being silent on the question of seconds must be read in the light of the evidence which shows that the market was flooded with seconds, and that the dominant purpose of the parties was to eliminate seconds and improve the market; and it was thought that a fair minimum price would aid in the accomplishment of that purpose.

The statement (p. 23) that before the meeting of March 29th and 30th Wayman sent to each manufacturer sample copies of the proposed agreements, is in accord with the facts, and establishes the contention of the appellants that he was dealing not with an association in this matter, or on behalf of an association, but on his own behalf with any and all of the manufacturers.

What is said (p. 26) of Wayman's claim to control so large an output of enamel ware, is beside the question. His efforts were to promote the use of the invention.

What is said (p. 27) with regard to options, is inconsequential when it is remembered that an option is merely an offer which becomes immediately enforceable upon acceptance, and can be accepted and made enforceable at any time before

it is withdrawn. In this case there is no question of the offers having been withdrawn prior to their acceptance.

What is said (p. 42) as to concentrating the power of the combination against Sullwold is to be read in connection with the fact that the statement is contained in a letter (v. 2, p. 317) which shows that Sullwold had cut the price, and that Mr. Wayman's permission to his licensees was merely to meet that cut.

The quotation appearing from the majority opinion below (p. 51), to wit: "All that can be safely said is that the automatic dredgers are useful tools," omits, inadvertently of course, the sentence following which favors the appellants. The next sentence is: "By their use, all other things being equal, ware can be made more cheaply and on the whole of a somewhat better average quality."

All the evidence shows that this is a very inadequate statement of the fact. The witnesses called by the appellants testified that there was no known way by which enameled ware could be made of uniformly excellent quality, except by the use of the Arrott invention; and the two witnesses called by the Government, Lose and Cook, both admitted the advantages of the power dredger, and that the power dredger makes better ware and more of it and one of them had never used the Arrott dredger (V. 4, p. 252, fols. 1 and 4; p. 254, fol. 3; p. 255, fol. 3; p. 257, fols. 3 and 4; pp. 263, 265). The testimony is that while the ware is of uniformly better quality when made by the use of this invention, it is also made more cheaply than any other known method of making good ware.

It is said (p. 54) that one of the appellant's witnesses testified that it is *possible* to make a fair tub by the hand dredge. But how often are mere possibilities realized in practice?

It is further stated (v. A, p. 118) by the majority opinion below:

> "Moreover, if the experience of the concerns which had the right to use the patented dredger had convinced them that the ware could not without their use be made good enough and cheap enough to be sold in competi-

tion with them, it is not conceivable that they should have gone to all the trouble they did to induce those two concerns to take licenses. According to the defendants' present theory the refusal to do so was tantamount to commercial suicide. If factories without licenses could not make ware which could be sold in competition with that made by those who had licenses, the fewer who had licenses the better for those who had."

The sum and substance of this statement is, that if by the use of the Arrott invention the ware could be manufactured cheaper than by any known method, self interest would dictate that the owner should retain its exclusive use, and even at the expense of continual litigation maintain their monopoly of its use. But the testimony does not show that the ware manufactured by the use of the Arrott invention could be made cheaper or compete with the kiln-run however made. The theory of the opinion ignores utterly the quality of the ware. The testimony is uniform, that by the use of the Arrott invention good ware, ware of first class quality, could be turned out in larger amount and at less cost than by any other known method

Furthermore, the theory of the opinion ignores the fact that the trade in sanitary enameled iron ware had degenerated and was in danger of extinction, and that, in order to preserve the trade and improve what was then the bad reputation of such ware and to make the trade develop, it was necessary to manufacture and sell only good ware.

That J. M. Kohler Sons Company and Iron City Sanitary Manufacturing Company sold ware in such competition with the licensed manufacturers was due to the fact that speculative builders and irresponsible plumbers were willing, if they could get it at all cheaper, to take defective ware and palm it off on the public as first-class ware.

These, among other reasons, adequately show why the Standard Sanitary Manufacturing Company was induced by Mr. Wayman to part with the Arrott dredger. It was to its individual benefit to redeem the reputation of the ware as soon as possible. These questions have been treated more at length in our main brief, and will be elaborated on argument.

The argument in the brief (pp. 68–77) proceeds upon what we consider an erroneous theory. It assumes that the restrictions were in fact on the articles sold by the licensees of Wayman. The fact is the restrictions were placed upon the use of the invention and extended only incidentally to the product of the use as a means to protect the inventor in the use of the invention. As is argued in our main brief, the only method of protecting an inventor in many cases is by preventing the manufacture, use and sale of articles which are produced by the use of the invention, though the articles themselves are unpatented.

The cases of *Keplinger v. De Young* and *Merrill v. Yeomans* referred to (p. 75) do not support the principle to which they are cited. The first was an action for damages for the infringement of a patent, and the question was whether the defendant had knowingly used the invention. The second merely holds that a patent in which the inventor claims a process cannot be held to be a patent on the product of that process.

The contention of the brief of the United States (pp. 79–87) is in conflict with the decided cases—the *Bement Case* in this Court, the *Heaton-Peninsular Button-Fastener Case* in the Third Circuit and the *Rubber Tire Wheel Case* in the Sixth Circuit, which all hold that the Sherman Act is not applicable to patent agreements. These conclusions were reached subsequent to this Court's decisions as to murder, arson, oil, whiskey, etc., covered by State statutes passed under the police powers. Nevertheless, the majority of the Court below decided, and the Government argues here, that the Sherman Act does apply and is in the same category with the statutes passed under the police powers of the States. We submit that the question is settled otherwise and not open to argument.

The cases referred to (pp. 85–88) are not in point. The typical case relied on, namely, the *Blount Case*, was held by the Court to be only an apparent license, but in reality not a license at all. The same comment applies to the other cases.

The *Raisin Case*, the *Rubber Tire Case* and the *Thresher Case* referred to (p. 93) are in point upon the proposition that the Sherman Act does not apply to patent agreements, as well

as upon the patent law as applicable to the agreements in the case at bar, and are clearly distinguishable from the *Yale & Towne* and *Harrow cases*, for in the latter cases the Court clearly pointed out that there were no licenses at all.

The groups of cases referred to (pp. 94–95) are in point upon the question of what limitations or restrictions the owner of an invention may impose, and also upon the question of his right to fix prices and resale prices; and some of the cases are in point upon the question of the application of the Sherman Act.

It should be observed also that there is no question in this case of a combination of competing patents. The Arrott invention was a basic patent. The Ditheridge and Lindsay inventions were infringing patents, subordinate thereto (v. IV, pp. 138-360).

Motion to Enlarge the Time to Take Testimony.

The petitioner here has brought a proceeding in equity. A principle of equity jurisprudence is that he who seeks equity must do equity. It is submitted that it was a flagrant perversion of that doctrine to tie the hands of the defendants by the indictments found upon the same state of facts as existed in the case at bar and insist that the defendants should be given no opportunity to give their testimony.

While the Sherman Act provides various remedies, here the objects of the act could have been entirely satisfied by the United States applying for a preliminary injunction, enabling the Government then to prosecute its criminal cases and thereafter the defendants to take their testimony to protect their property rights. This is especially true in this case because of the information furnished to the Government by the defendant Wayman, upon which the petition was principally based.

Furthermore, the Government could have applied at any time for a preliminary injunction while taking its testimony, and if, as claimed by the Government (Brief, p. 12), the exhibits admitted to be correct by the answers would without more establish the unlawful combination, the granting of the injunction would be a mere matter of course.

We submit that the Court below erred in holding that the Government had established a case entitling it to an injunction against the defendants, and that the decree below should be reversed.

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Of Counsel.

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IN THE

Supreme Court

OF THE UNITED STATES.

STANDARD SANITARY MANUFACTURING COMPANY, *et al.*,
Plaintiffs in Error,

against

UNITED STATES OF AMERICA,
Defendants in Error.

BRIEF IN BEHALF OF THE COLWELL LEAD COMPANY and JESSE T. DURYEA, IMPLEADED WITH OTHERS, PLAINTIFFS IN ERROR.

The situation with respect to the COLWELL LEAD COMPANY and its President, JESSE T. DURYEA, is radically different from that of the other defendants and for that reason it is desired to submit a separate brief in their behalf, supplemental to the main brief of all the plaintiffs in error.

Statement of Case.

This is an appeal from the United States Circuit Court for the District of Maryland in a proceeding in equity under Section 4 of the Act of Congress,

approved July 2, 1890, commonly called the "Sherman Anti-Trust Act." The original petition was filed in the Circuit Court on July 22, 1910, by the United States. There are sixteen corporations and thirty-four individuals named as defendants. The petition is the usual one alleging the violation of the Anti-Trust Act by means of a combination under uniform patent licenses. The petition did not waive answers under oath, but required that the defendants answer under oath and the answers of the defendants, were therefor sworn to. Pending the taking of the Government's testimony, indictments were found against the defendants in the District Court of the United States for the Eastern District of Michigan for the same conspiracies and combinations set forth in the petition herein. When the defendants began to take their testimony, the individual defendants, who were sworn, were threatened by the counsel for the Government that their testimony might be used against them on the criminal case, whereupon, the defendants were unwilling to testify and answer questions in this proceeding. The defendants' counsel thereupon endeavored to secure an extension of time to take the testimony until after the criminal trial, but the Circuit Court denied the motion. An appeal from the denial of such motion was likewise taken and is now before this Court.

The special questions raised by the Colwell Lead Company are:

FIRST. The good faith and propriety or reasonableness of the acts of the Colwell Lead Company, as shown by the evidence.

SECOND. The right of the owner of an invention to grant licenses upon such conditions as may benefit or protect his own business or trade.

THIRD. The right of a person to take a license from the owner of a patent in good faith for use in his own business and for his own advantage without regard to what use license agreements may be put to by others.

FOURTH. The serious prejudice of the denial of the motion to enlarge the time for taking testimony.

These questions are raised by appropriate specifications of error.

The specifications of error which we rely upon in this brief are the following:

The Court erred:

THIRD. Because, as appears from the record in this cause, the defendant Colwell Lead Company was not engaged in interstate commerce within the meaning of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

FOURTH. Because, as appears from the record in this cause, the manufacturers' license agreements and the jobbers' license agreements, and the price lists made part of said agreements, all described in the petition in this cause, were not means adopted and used by the defendants in order to carry into effect the objects and purposes of any unlawful combination in restraint of said interstate trade and commerce in violation of said Act of Congress, and said agreements and price lists were legal and the Petitioner was not entitled to an injunction enjoining the defendants and all and each of them, and their officers, agents, servants, and employers from doing anything in furtherance of said manufacturers' license agreements and job-

bers' license agreements, and from enforcing said agreements or any of the terms thereof, and from adopting and enforcing said price lists in interstate commerce in sanitary enamel iron-ware.

SEVENTH. In holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were illegal and void.

EIGHTH. In holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were not legal under the patent laws of the United States.

NINTH. In not holding that the manufacturers' license agreements, the jobbers' license agreements, and the price lists made a part of said agreements, all described in the petition in this cause, were legal under the patent laws of the United States.

TENTH. In holding that the defendant Wayman, as owner of the patents described in this cause, could not legally under the patent laws of the United States make with the corporate defendants the manufacturers' license agreements, the jobbers' license agreements, and establish the price lists made a part of said agreements, with regard to sanitary enamed iron-ware made by the use of the inventions covered by said patents.

TENTH. In holding that the owner of patents could not legaly under the patent laws fix the price and prescribe the terms and conditions under which the product of the use of the inventions covered by said Letters Patent could be sold.

FOURTEENTH. In holding that the agreements described in the petition in this cause were illegal and in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monoplies."

TWENTY-THIRD. In holding that price agreements pure and simple are always illegal, without regard to whether the prices fixed are reasonable or unreasonable, or whether they tend to restrain interstate trade or commerce, or to stifle competition, or whether they tend to render business more stable and enable manufacturers, jobbers and retailers to conduct business at a reasonable profit upon the reasonable expense of production, handling and sale.

TWENTY-FIFTH. In holding that the owner of patents could not legaly make contracts controlling and fixing the prices and resale prices of the product of the use of the inventions covered by the patents, though the articles made by the use of such inventions were of better quality, could be produced at less cost and under better conditions, and the prices fixed were reasonable.

TWENTY-SEVENTH. In holding that the motion of the defendants that further proceedings in this cause be postponed until the criminal proceedings pending in the District Court for the Eastern District of Michigan against these same defendants have been finaly disposed of and that the taking of testimony be reopened could not be granted.

TWENTY-EIGHT. In overruling the defendants' application for leave to take further testimony.

TWENTY-NINTH. In not holding that the petitioner was not entitled to a decree in this cause while pressing the criminal prosecution against the defendants on account of the same transactions on account of which the decree in this cause was asked.

THIRTIETH. In holding that this cause was ripe for decree in view of the fact that the petitioner was pressing the criminal prosecution against the defendants for the same transactions on account of which the decree in this cause was asked, and at the same time preventing the defendants from testifying in their own defense in this cause as to material matters by threatening if they did so to use said testimony against them at the trial of said criminal prosecution.

The Issues Under the Pleadings as to the Colwell Lead Company.

The Colwell Lead Company filed its separate answer under oath, and it will be observed from this answer that all the material allegations of the bill are in issue. We do not desire to repeat at length here the allegations of the bill, but simply to state that the burden of proof is upon the United States of America to establish the essential allegations of this bill so far as the Colwell Lead Company is concerned by competent and ample evidence. The bill sets forth in substance that the various defendants are engaged in interstate commerce; that they had meetings at which a plan was devised to take uniform licenses under certain patents which were to be transferred to one Wayman, and that under these uniform licenses prices were to be fixed to the jobbers and that the

jobbers in turn are to be under contract to resell at fixed prices and that the defendants all agreed that they would sell only to jobbers and only to such jobbers who would sign contracts agreeing to maintain prices and deal exclusively with the manufacturers. These are all essential allegations of the bill and are as stated denied.

The Colwell Lead Company, in its answer, affirmatively sets forth that *it is not engaged in interstate commerce;* that it manufactures enameled ware *solely for its own use;* that it is itself *a jobber,* rather than a manufacturer; that *it buys as much enameled ware as it makes,* for it sells in its jobbing business twice as much as the product of its enameling factory; it alleges that its business is *local and not interstate;* it alleges that *it does not sell to jobbers and never has,* and, therefore, was *never a party to any agreement* as to the prices at which goods were to be sold, and that it has never asked a jobber to enter into a resale agreement as set forth in the petition, for the reason as aforesaid; that it does not sell to jobbers; that it has no occasion to make any such request. The Colwell Lead Company further alleges that *it was using the patents in question for a long time prior to the alleged conspiracy* set forth in the bill, and that it was using the same in its factory at the times referred to in the bill, and was paying a royalty for the use thereof, and that it has continued the use of the said patents for the reason that the use thereof is essential and necessary to the Colwell Lead Company in its business; that it took a renewal of this license or a new license from Wayman for that reason and for none other; that *it was not concerned in any manner whatsoever with any of the price restrictions set forth in the license agreement* referred to in the said bill and attached thereto as an exhibit. The Colwell

Lead Company denies that it has ever entered into any agreement respecting prices, or that it has ever considered itself bound by any agreement as to prices, and alleges that its business at all times has been competitive. It denies that it has any knowledge or information concerning any agreement or understanding between the other defendants named in the said bill.

Statement of Facts.

Before referring to the particular evidence which concerns the Colwell Lead Company, it may be well to state very briefly the general situation.

Sanitary enameled iron-ware is a casting of iron covered with a white enamel and is the ordinary enamel iron-ware of commerce. The articles manufactured by the plaintiffs in error in this case consisted of bath tubs, lavatories and sinks. The ware must not be confused with the so-called enameled ware kitchen utensils as that is a different class of ware entirely. The enameled iron-ware referred to in this case is exclusively classed as plumbing supplies and it is an article that must be installed by a duly licensed plumber under the regulations of practically every State. At the times referred to in the petition there were approximately twenty concerns in the United States engaged in the manufacture of this ware. The largest of these manufacturers is the Standard Sanitary Manufacturing Company, and its production *is more than fifty per cent. of the entire output.* The product is sold largely to the plumber direct, but it is also sold to jobbing houses. Many plumbers do a large business contracting for an entire row of houses or apartments and buy their material direct from the manufacturers in carload lots. Small

plumbers, however, do not carry a line of plumbing supplies and obtain their requirements from a jobbing house in small quantity for reasons that are obvious.

The process of manufacture is very fully set forth in the brief of our learned associate, and we shall only refer to it in the briefest possible manner.

Enameled iron-ware is manufactured by casting iron in the shape desired, cleaning the casting, smoothing up any roughness, generally with a sand blast. The casting is then heated in a furnace to a red heat, a temperature of about fifteen hundred or sixteen hundred degrees Fahrenheit, is withdrawn from the furnace and sprinkled with an enamelling powder. This powder is virtually an opaque white glass in a very finely pulverized state. This powder is sprinkled on the heated casting and fuses to the surface of the iron, melting and flowing a uniform smooth white coat. In sifting the powder an appliance called a dredge is used, which is nothing more or less than a sieve. The quality of the ware produced depends on the hardness and smoothness of the glass enamel and the degree of adhesion between the enamel and the surface of the iron, and commercially the appearance of the finished article is of prime importance. The Arrott dredger superceded the hand process of applying the enamel, for the reason that by the mechanical operation of the Arrott dredge the enameling powder could be harder quality—could be applied more smoothly, more evenly and more quickly than by the hand process, and being applied more quickly the iron casting was hotter when the powder touched it so that the powder fused more firmly into the surface of the iron. The resulting product was much better in quality than

that made by the hand process. The inherent quality of the ware was much better. By the hand process there was a much larger percentage of seconds or defective ware and the enamel used was not so hard an enamel as that used with the automatic dredge. The softer enamels lost their gloss quicker and became more or less unsanitary in consequence. Of course, a good tub made by a competent workman by the hand process presented an excellent appearance—one that could not be distinguished from a similar article made by the Arrott dredge—but the enamel in the ware made by the Arrott dredge more firmly adhered to the iron—a thing which was not visible to the eye.

Now, the Colwell Lead Company in 1909, *more than a year prior to the alleged combination* set forth in the petition, entered into negotiations with the Standard Sanitary Manufacturing Company to secure a license to use the Arrott dredge and it obtained from the Standard Company its consent to use same upon the payment of a royalty of a dollar a day per furnace. At this time there was no thought on the part of the Colwell Lead Company of the granting of a uniform or any other kind of license to any other manufacturers, no suggestion that other manufacturers desired to use it, no suggestion as to any restrictions as to prices or anything of that sort. The Colwell Lead Company appreciated the advantages of the Arrott dredge and desired to use it and they applied for a license and secured it and they installed the dredge at their factory. The good faith of this transaction is not and could not be attacked.

Later, Wayman as Commissioner or Secretary of the Manufacturers' Association, observing the difficulty that existed over the production and sale of defective material and knowing that the Arrott dredge was being infringed by various manufac-

turers and that the trade was injured with the public by the defective material which was being put upon the market due to the efforts to produce ware as cheaply as the Standard could by the use of the Arrott dredge, took up the question with the Standard Company of permitting other manufacturers to take licenses. *This was months after the Colwell Lead Company had secured its license.* Wayman represented to the Standard Company that the defective material could be eliminated from the market and general business conditions improved without interference with the Standard Company's business by licensing its competitors to use the Arrott dredge under proper restrictions, and the Standard Company expressed to Wayman a willingness to permit him to try to carry out such a plan and give him an option on the patents for that purpose.

We know of no better way for an inventer to get people to use his invention then to call them together and find out what they are willing to do and to devise a uniform license which will suit the requirements of all the parties interested. However, the Colwell Lead Company knew nothing of these meetings, did not attend them, was not represented at them and at no time was the Colwell Lead Company a party to any negotiations or proceedings which Wayman had with the various manufacturers. After all the rest of the defendant manufacturers had agreed to take a license and had executed and obtained them. Wayman called upon the Colwell Lead Company and told them that their old license was revocable at will and he now had the title to the patents, and that a new license would have to be taken from him. Naturally, the Colwell Lead Company, appreciating the value of the invention and the necessity

for its use, renewed the license with Wayman, but the license it obtained from Wayman was not the same as that of the other manufacturers, and it is to be observed, as we shall point out by the evidence, that *the Colwell Lead Company was not only not engaged in interstate commerce, but that it sold only to plumbers and not to jobbers at all and that none of the price restrictions were applicable to the Colwell Lead Company, nor was it at any time in any relations whatsoever with the other defendants in this proceeding.*

The Evidence.

We desire to point out every reference to the Colwell Lead Company in the proofs offered by the Government, and to state the evidence offered by the Colwell Lead Co.

a. The Government's evidence.

It is to be observed that no single one of the witnesses called in behalf of the Government, other than Wayman, referred in any way to the Colwell Lead Company or to its officers. The witnesses, other than Wayman, were generally jobbers of plumbing supplies who had had correspondence with one or more of the other defendants relative to the jobbers' agreement, but, as before stated, *the Colwell Lead Company, being itself a jobber, and not at any time selling to other jobbers, never had occasion to deal with any of the witnesses called by the Government,* and, therefore, the absence of any reference to the Colwell Lead Company is easily explained.

Wayman's testimony shows that he was "Commissioner" of the Sanitary Ware Association, which association was a trade organization, and

which had meetings from time to time for the general benefit of the trade. The Colwell Lead Company was a member of that organization. Wayman's testimony is that he took up the question of the Arrott patents of various meetings of this association in February, March and April, 1910. *At no one of these meetings was the Colwell Lead Company present or represented.* Wayman testified as to who was present at these meetings (pp. 12-15, 17, 29), and *he does not in any instance* show that the Colwell Lead Company was present, and the affirmative testimony of Jesse T. Duryea is that he was not present at any of the meetings and that he could not have been present is obvious from the fact that he was in California during the whole of the period, as he testifies (p. 264), and, as we have stated, there was no representative of the Colwell Company present. None of the exhibits offered by the Government, being the various resolutions of the association and committees, bear the signature of the Colwell Lead Company, and the minutes of the meetings do not show that they were present, nor does the testimony of any single solitary witness.

The Colwell Lead Company in its behalf subpœnaed various other defendants and asked them the question directly whether they saw any of the representatives of the Colwell Company present at any of the meetings, or whether they discussed the matter of a license agreement with the Colwell Company, and each and every one of them denied that they ever had discussed any agreement with the Colwell Lead Company, directly or indirectly, or had ever seen any of its representatives at any of the meetings (see pp. 441-449, 493- Vol. 3; p. 14, Vol. 4).

It is true that in the various proposed agreements the name of the Colwell Company was

placed in the schedule of manufacturers entitled to preferential discounts, but there is no evidence that it was placed there with the authority of the Colwell Lead Company, and it does not appear why Wayman put the name in the list for such preferential discount. *Knowing that the Colwell Lead Company was already using these patents* under a license from the original owners from whom Wayman contemplated buying, Wayman *may have expected to continue or renew the license to the Colwell Company*, and may, therefore, have thought that he should protect persons who were already using these patents; at all events, he had no authority from the Colwell Lead Company to use its name.

The only other things which could be considered as evidence in any way would be that shown on pages 144 and 145, which the Government alleges is correspondence between Wayman and the Colwell Lead Company bearing on this subject. The first item, Exhibit 76, purports to be a letter written by the Colwell Company to Wayman in reply to a letter written by Wayman: "We will not require any preferential discount below the price made by the Standard Sanitary Manufacturing Company." This letter, in the first place, is not proven. It is not an original, but a copy, as was also the next exhibit, 77 (see statement of Mr. Grosvenor, p. 273). If this letter was really written, and if it does refer to a uniform license plan, how is it that, notwithstanding the statement of the Colwell Company that it did not require any preferential discount, there *was* a preferential discount allowed to the Colwell Company in all the proposed agreements, all of which were submitted to the various defendants subsequent to the date of the alleged letter? Bearing in mind that Wayman was commissioner of an association or or-

ganization of manufacturers, and had an option to purchase patents which the Colwell Company was using, and had been using for a considerable length of time, and bearing in mind that the letters of Wayman to which these are in answer are not in evidence, we contend that it is not proper to draw the inference that the Colwell Company is to be charged with all the matters and things which were discussed between the manufacturers as alleged by the Government, or were a party to the conspiracy which the Government seeks to establish as having been entered into at these various meetings and by virtue of these various agreements. Exhibit 77, an alleged letter of March 15th, was only a copy, not proven, and Wayman did not even testify that he received it. It is to be noted *that there was no answer to the question addressed to the witness concerning the letter; that it was a copy*, and that it was already in evidence and marked, and *no one knows whence the copy came from or who made it or whether it is correct or not.* One thing is clear, that on the face of the letter the Colwell Company did not commit themselves to anything other than it acknowledged that it received a copy of a proposed agreement from Wayman. This letter, if written at all, was written by Dr. Duryea in California. As to this, the doctor says (p. 271) that he does not recall any correspondence with Wayman; than any such letter was evidently written while he was in the West; that the letter did not refresh his recollection; that (p. 273) he was on a pleasure trip and stuffed whatever communications he received in his valise, and never looked at them, but that he simply wrote acknowledging receipt without looking at the papers he had received. Dr. Duryea does not deny having written some such letters as Exhibits 76 and 77, but said he had some letters from Wayman,

and that he answered in a general way, but that he does not recall the details of the transactions, and his admissions are not sufficient to establish the letters, the originals of which are not produced or proven, nor their absence explained.

Admitting, for the sake of argument, that Dr. Duryea wrote some such letters in the spring of 1910, but that he was not present at any of the meetings or discussions, it is not sufficient to charge him or his company with being a party to the conspiracy unless he subsequently became an active party to it, with a full knowledge of all that took place.

The only other reference to the Colwell Company is at page 44, where Wayman was asked to look at separate sheets, entitled license agreements, and asked if they were the original contracts entered into by him with the manufacturers. *This question was not answered by Wayman*, but the counsel for the Government offered various papers in evidence, Exhibits 13 to 28. In the volume of the Government's exhibits (p. 42), there is a statement with reference to these exhibits, stating that they are identical with petitioner's Exhibit 9. We called the attention of the Government to the error in this statement at the time we took the testimony of Dr. Duryea, (p. 268), pointing out that the Colwell Company's contract was not identical with the other contracts, but was different. This was conceded by the Government. The Colwell Company's contract with Wayman for a renewal of this license for the Arrot patents is not established in evidence, nor is it printed, but the testimony of Dr. Duryea, as well as that of Wayman, shows clearly that it was not the same as that of the contracts made with the other defendants (p. 164, Vol. 4; p. 272, Vol. 3).

We have then, on the Government's own case, absolutely nothing to justify the statement that the Colwell Lead Company was a party to any conspiracy, or that it entered into any agreement to maintain prices, or that it did maintain prices, or that it required jobbers to sign resale agreements, or any of the matters and things alleged by the Government to be in violation of the Sherman Act. *It does not appear that the jobber's resale agreement was ever seen by the Colwell Lead Company;* that such resale agreement is not referred to in the license agreement, and does not appear that it ever came to the Colwell's attention. Certainly it had no use for it.

b. The evidence of the Colwell Lead Company.

Now, what is the evidence in behalf of the Colwell Lead Company? We have the testimony of Dr. Duryea (pp. 265, 266, 267), corroborated by the testimony of Mr. Torrence (p. 457), and Mr. Dawes (pp. 474, 475), to the effect that in the spring of 1909 the Colwell Lead Company arranged for a license under the Arrott patent with the Standard Sanitary Manufacturing Company, who were then the owners; that the license agreement was reached on a royalty basis, and the patents installed in the Colwell Company's factory. This was long prior to the alleged conspiracy or any of the matters set forth in the Goverment's bill. We have, from the testimony of Dr. Duryea, that he was not present at any of the meetings testified to by Wayman or by any of the Government's witnesses; that he was in California during February, March and April of 1910, and knew nothing about what was going on in the way of any effort of the manufacturers to get together. He said he

received some circular letters from Wayman, stuffed them in his valise and did not read them; he was away on a pleasure trip and paid no attention to those matters. In this he is corroborated by the testimony of eight or ten defendants called in behalf of the Colwell Company, to the effect that the Colwell Lead Company was not present at any of these meetings, and that they had never discussed with the Colwell Company or any of its representatives the license arrangements of any kind or description.

The various agreements offered by the Government in the nature of preliminary agreements *do not bear the signature of the Colwell Lead Company*, nor do the records of the various meetings offered by the Government show the presence of the Colwell Company or its representative; and, as we have heretofore stated, there is nothing to contradict the testimony of Dr. Duryea that his company was not represented and had no part in or knowledge of the matters and things alleged by the Government. Dr. Duryea's testimony on the subject of these meetings is that he first heard of any of those meetings in the summer of 1910, after this suit was brought (p. 264, fol. 3). Then Dr. Duryea testifies that some time in May Wayman came to his office (p. 266, fol. 3), and that this was the first time he had any talk with him in connection with the alleged agreement (p. 266, fol. 4; p. 270, fol. 3). At that time he had a conversation with Wayman, to the effect (p. 267) that Wayman now had the alleged patents; that he was issuing licenses to manufacturers, and that it was *necessary* for the Colwell Company to have a new license; that the Colwell Company's agreement with the Standard Sanitary Manufacturing Company had ceased when Wayman took over the patents. Duryea wanted to continue the use of

the patents for the same reasons that led him to obtain the original license he had from the Standard Company a year before and he finally consummated an arrangement with Wayman. The testimony is that this arrangement was *not* similar to the license which Wayman proposed to give to the manufacturers, but that there was a considerable change made in it. Just what this change is does not appear in the record. It is true that counsel for the Government produced some paper which he referred to as Exhibit 14 and sought to have Dr. Duryea identify the document, which had not up to that point been proven by the Government, but upon objection being made, the Government withdrew its question, and the Colwell Company's contract with Wayman for a renewal of this license is not established so far as this case goes. *It does appear, however, affirmatively that it was a different contract from the contract with the other manufacturers*, and it does appear affirmatively what the reasons were which led to its being different, viz., that the Colwell Company was not a manufacturer in the sense the other manufacturers were, but that it was a jobber and that it sold direct to the consumers; that it was not concerned with any provisions or clauses relating to any prices, but that the only interest that it had in the license agreement was the use by it of the alleged patents which it had been using and manufacturing the enameled ware for its own use.

The Government's witness, Wayman, was subsequently called in behalf of the defendant Colwell Lead Company, and practically corroborated the Colwell Company's testimony. Wayman's testimony on this subject, beginning at page 163, is that he did not recall having any conversations with Dr. Duryea prior to May, 1910, when he went to see him with reference to a renewal of the

license under the alleged patents. He says (p. 163) that Dr. Duryea was not particularly interested at the time, but that later he accepted a license; that Dr. Duryea said (fol. 4) that he "did not want to get tied up in any license agreement which would prevent him from meeting local competition"; that he, Wayman, got up a special agreement *to cover that situation*. Wayman says also that he knew that the Colwell Company's business was local; that the Colwell Company was a jobber, and that Wayman offered to provide so that the Colwell Company could be free in the matter of local competition. He testified further (p. 164) that Dr. Duryea and his company *did engage in a free and open competition in business in New York* after they had taken a license from Wayman, and that he, Wayman, had a great many complaints from other people about it.

We desire to call attention further to the evidence offered by the Colwell Company in addition to that just referred to as to the character of its business; that it is local and *not interstate*. In the first place, the allegation of the Government's bill, that the Colwell Company is engaged in interstate commerce, is denied by the Colwell Company, who assert in their answer that their business is purely local; that their product is shipped from their factory in New Jersey to their warehouse in New York City and is sold locally in New York, so that the burden is on the Government to show that the Colwell Company is engaged in interstate commerce. This burden it has not met. The Colwell Company, however, has offered evidence tending to show the local character of its business, and this evidence is that of Dr. Duryea (pp. 261, 262, 263) showing that the product of the factory in New Jersey is shipped to the warehouse in New York City and to their branch

at Worcester, Mass., and is there warehoused; that the product is then sold locally; that the Colwell Company do not have agents in different places in the United States, as alleged in the bill, but sell directly from their warehouses. In this he is corroborated by the testimony of Lefferts, the manager of the enameling plant of the Colwell Lead Company, who says that the entire product is shipped to the warehouse in New York City and is not shipped to any other place (p. 157, Vol. 4); and by the general testimony of the various defendants to the effect that the Colwell Company's business is generally understood to be a local business and is not interstate commerce, testimony which is generally corroborative of the specific testimony of the Colwell Company (pp. 449, 465, 483).

On cross examination of Dr. Duryea, he did testify, in answer to counsel for the Government, that the Colwell Company shipped some goods to New Jersey and some to Connecticut, but he specifically stated (p. 280, fols. 3 and 4) that it was so shipped only after it had been sold at the warehouse, as, for instance, when a plumber comes in from Jersey City and buys a tub the Colwell Company will ship it to Jersey City for him. But such business, we respectfully submit, is not interstate commerce within the meaning of the Sherman Act.

Argument.

FIRST. THE GOOD FAITH AND REASONABLENESS OF THE ACTS OF THE COLWELL LEAD COMPANY ARE FULLY ESTABLISHED BY THE EVIDENCE.

We contend that we have established beyond any question of doubt that the Colwell Lead Company is a jobber of plumbing supplies; that it has a

warehouse in the City of New York, from which it sells locally plumbing supplies. It has a branch at Worcester, Mass., where it conducts a similar business. It sells all kinds and descriptions of plumbing supplies. It owns a small factory at Elizabeth, New Jersey, where it manufactures enamed iron-ware. It manufactures only about one-half of what it sells (pp. 278, fol. 3), and it buys enameled ware from manufacturers for sale in addition to what it manufactures itself. In the course of its manufacture, the Colwell Lead Company deemed the use of the Arrott patents of advantage to it and it arranged to take a license and install the device and use them in its factory. Now let us assume, for the sake of argument, that the Government has established its allegations with respect to the other defendants. Let us assume that in the spring of 1910 the various manufacturers engaged in the conspiracy to have these patents transferred to Wayman and license agreements issued respecting the selling prices. Now, it is clear from the evidence that the Colwell Company had nothing to do with those negotiations, and there is no reason why it should take part in such transactions for two reasons: First, it was already using the Arrott patents, and, second, it was not concerned with the price at which manufacturers sold to jobbers, for the simple reason that the Colwell Company never sold any of its product to jobbers, but, on the contrary, was in competition with the jobbing trade.

It must be borne in mind that one of the chief allegations of the conspiracy urged by the Government is that the defendants concocted a resale agreement to be signed by jobbers, upon which they could obtain goods from the manufacturers. Such a resale agreement would not be of use to the Col-

well Company, and, as a matter of fact, it never did ask any jobber to sign any such agreement, for the reason that it was useless to the Colwell Company. The fact that Wayman may have sent one or two of his circular letters to the Colwell Company is of no significance. That is not evidence of any acquiescence in the plan or scheme. It is, rather, evidence, taken in connection with the fact that the Colwell Company did not take part, that it was not interested or concerned. Now, after the agreement or conspiracy was made and the different manufacturers entered into it and signed their different contracts with Wayman and Wayman took over his patents and prepared to issue his uniform license, and did issue them to manufacturers, *it was natural that he should call upon the Colwell Lead Company and insist that they should renew their license with him.* He says he wanted the revenue from the Colwell Company, and the Colwell Company did not care who got the revenue so long as it could use the patents, and which they considered advantageous. It is in evidence and undisputed that the Colwell Company wanted a license so that it could be free to compete with other jobbers in their local business, and Wayman says that he arranged this in the form of a letter so that they would be free in that respect.

Let us assume, for the sake of argument, that the Colwell Company took a license agreement similar in form to that of the other manufacturers. Would that make the Colwell Company a party to the conspiracy alleged by the Government? None of the conditions as to the sale and resale agreements were applicable to the Colwell Company. It could not be said that they entered into such an agreement for the purpose of maintaining prices or that they did maintain prices. The inference

is that they entered into such a license agreement because they wanted to continue the use of the devices they had been using, and it was the only way in which they could continue its use. The Colwell Company was in a position where in dealing with an inventor they were obliged to accept his terms, whatever the terms might be, and so long as the Colwell Company, in accepting those terms, did not itself agree to the conditions which were not applicable to the Colwell Company, and were never enforced, and in their nature could not be enforced, any conditions which, under the circumstances existing, could not restrain commerce, ought not to, and can not, be read as a violation of the Sherman Act.

The provisions of the uniform license agreement, applying them to the case of the Colwell Company, are that the Colwell Company shall sell to jobbers only at such prices as should be fixed by the licensor, *but the Colwell Company does not and never has sold to jobbers.* The testimony is undisputed that it does not sell to jobbers; that its business is of such a character that it would never sell to jobbers; but competes with jobbers. Such a provision could not amount to a restraint of trade of the Colwell Company, and least of all could it be such an unreasonable restraint as the Supreme Court of the United States, in the recent cases, says is necessary to sustain the action of the Government. The Colwell Company's answer, which is evidence, is that it has not made a single sale to a jobber in four years. We submit that the Colwell Company might easily agree that it would not sell to a jobber for the next four years; but that would be no evidence of any restraint whatever.

We submit that the Colwell Company had a right to contract for the continuance of the use by it

of patents which it had found advantageous, and that the continuance by the Colwell Company, under any of the conditions complained of by the Government, would not amount to an unreasonable restraint in the case of the Colwell Company itself. If now the Colwell Company is enjoined in this action, it is in effect deprived of its right to continue to use the Arrott patents, a right which it unquestionably has and which it requires in order that it may manufacture successfully and economically. The Colwell Company has never construed its license from Wayman to prohibit its competing freely, and it has competed freely, as the evidence shows. An injunction prohibiting it from using the Arrott patents would work vastly more in the way of restraint of trade than anything that the Colwell Company has done.

Again, a decree against the Colwell Company is an adjudication which practicaly convicts the Colwell Company of a violation of a criminal statute. It is an adjudication that it has entered into a conspiracy in restraint of trade when, as we have pointed out, the fact is that the Colwell Company has no arrangement or understanding, expressed or implied, with any other of the defendants. It has solely exercised the right of every individual to contract for its own benefit in the use of patents which it found necessary and advantageous for its purpose long before the conspiracy claimed to have been made. Whatever may be urged in support of the alleged conspiracy of the manufacturers of sanitary enameled iron-ware, none of the allegations are applicable to the case of the Colwell Company.

It may be argued that the license contract provides for a preferential discount for the Colwell Company, and that therefore they were a party to the conspiracy. An examination shows that these

preferential discounts relate only to *sales to jobbers*. The mere fact that such a statement appears on the face of a license agreement would show the ignorance of the party who prepared the license agreement of the facts bearing upon the business of the Colwell Company. If such license agreement were drawn specially for the Colwell Company, there might be a basis for argument, but as matter of fact the license is a printed form, and as such, inapplicable clauses are not entitled to much consideration. No one who knew for one minute what the business of the Colwell Company is would have put such a preferential discount in it, for it is obviously an inapplicable provision. The Colwell Company was unfortunate, perhaps, in being obliged to deal with Wayman for a renewal of its license, but it must not be forgotten that the Colwell Company had a right to deal with the owner of the patents, whether the owner of the patents was in a conspiracy with others in the violation of the Sherman Act.

We respectfully submit that the Government has failed to establish any case against the Colwell Company, but, on the contrary the Colwell Company has shown very clearly by its evidence that it is innocent of any combination or agreement with others; that its business is so separate and distinct from the others that it is not affected by any of the provisions of the uniform license agreement; that it was not concerned in concocting such agreement, and that it had a right to take the best license that it could get *so long as that license, in its application to its own business, did not involve any unreasonable restraint in interstate commerce.*

Bearing in mind that the owner of a patent has a legal right to impose conditions upon his licensees, the Colwell Company could not be charged with the burden or the effect of conditions imposed

upon others, so long as such conditions did not unreasonably restrain any interstate commerce of the Colwell Company.

We respectfully urge this Court that, so far as the Colwell Lead Company is concerned, it is not guilty, and that the Court below erred in finding that it was.

SECOND. THE RIGHT OF THE OWNER OF AN INVENTION TO GRANT LICENSES UPON SUCH CONDITIONS AS MAY BENEFIT OR PROTECT HIS OWN BUSINESS OR TRADE.

(a) *At Common Law.*

The facts upon which we argue are so fully set forth in the main brief of the plaintiffs in error that we deem it necessary only to summarize the essential points of the evidence.

The Standard Company owned an invention of great commercial value. Any invention that reduces cost is of great commercial value, and the value of the Arrott dregde is well established and conceded by the Court below. The Standard Company sold its produce to plumbers and jobbers of plumbing supplies and its volume of business was very large compared with that of its competitors. Its competitors tried to get licenses; they infringed; infringement suits were brought and other manufacturers enjoined and new infringements devised and new suits begun. The Standard Company by reason of its leadership in the business was greatly interested in the proper development of that business in competition with porcelain and vitreous wares. It was enabled, by virtue of its Arrott process, to manufacture more cheaply and better ware than its competitors. This enabled it to properly

grade its product and destroy its defective ware, melting it up and using the material over again, and to sell to the public only such ware as would pass a proper inspection. Its competitors, however, in order to meet the Sandard Company's prices—indeed, in order to exist at all—sold everything that came out of the furnace, good, bad or indifferent, and unscrupulous, contracting plumbers would buy defective ware—ware that ought to be broken up and put into the scrap heap—and instal it in a row of apartments and sell the buildings to some unsupecting purchaser, whose subsequent complaints were certainly not encouraging to those interested in building up the trade.

This defective ware was a source of great trouble and of great injury to the trade as the evidence shows conclusively.

In this situation, Wayman proposed that the Standard Company license it competitors to use the Arrott dredge, thus enabling them to manufacture cheaply, *upon condition that defective ware be eliminated and upon such further conditions as would protect the Standard Company's business or trade.* In the license finally issued, defective ware was eliminated in all classes of ware excepting tubs, and defective or seconds tubs were required to be painted green and to have the raised letter B two inches in length cast on each leg. The page of the price list or catalogue referring to these defective tubs is interesting in view of the Government's argument in the Court below. It is as follows (omitting prices and discounts):

"Baths—Seconds (Defective)—Schedule 3
"Seconds" Baths (Defective Baths)

Shall have green painted exterior and furnished with plain legs with a raised letter 'B' 2 inches in length cast on each leg."
(Here follows price and discounts.)

"After leaving Manufacturer's Warehouse, they are not subject to return for any reason whatsoever, and the Manufacturer or Jobber shall assume no risk, guarantee or obligation in their sale. *They are not to be furnished with exterior ground smooth for decorating purposes.* The *crates shall be marked 'Seconds.'*

"Manufacturers or Jobbers *shall not affix labels of* any kind whatsoever in 'Seconds' Baths, *nor shall they either verbally or in writing agree to give any guarantee whatsoever*, nor shall they accept or execute orders for 'Seconds' Baths with the proviso that the baths are guaranteed."

It will be observed from the foregoing that a great advantage would accrue to the public from the proper grading and classification of ware and the elimination on proper regulation of ware which had been used to defraud. It is to be observed that none of these conditions, with respect to defective ware, could be considered a restraint of trade as they were really for the benefit of the public and against the interests of the manufacturers for they would require the manufacture to destroy that portion of his product which was not a good article, and certainly it was well within the power of the owner of a patent to require his licencees to grade and classify the product so that it would be a proper article of commerce. The efforts of the licensor in this respect are certainly as laudable as the efforts of the Government under the Pure Food and Drug Act.

The licenses finally issued also contained the provisions protecting the Standard Co's trade by fixing the resale price to the plumber in accordance with the Standard Co.'s price list. As we have stated before, the Standard Company, with a volume of business larger than that of the aggregate volume

of its competitors, sold largely to the plumbers as did others of the defendants. In this, as well as to jobbers, the Standard naturally always protected its prices to the plumbers, that is to say, protected its own business, and when it consented to licensing its competitors to use an invention, the Standard asserted its right to protect its own business and trade in the matter of requiring a maintenance of its prices.

A careful consideration of the recent decisions of this Court shows an unqualified approval of the common law principles relating to restraints. We know of no better statement of these principles than is to be found in the careful opinion of Mr. Justice LURTON in the case of *John D. Park & Sons* v. *Hartman*, 153 F. D., 24, quoted at great length and approved in the prevailing opinion in *Dr. Miles Medical Company* v. *John D. Park & Sons Co.*, 220 U. S., 373. Ample authority in the decisions of this Court is cited for the proposition that covenants in partial restraint and ancillary principals of contract will be upheld when the restraint imposed is necessary or proper to protect a retained business. At common law, it was unquestionably lawful for a manufacturer to make an agreement with his customers to give them a rebate if they should refuse to sell his article or other similar articles at less than a certain price.

In the *Matter of Green*, 52 F. R., p. 111, Judge JACKSON held that a contract or agreement to purchase exclusively from a certain manufacturer was not unlawful; that the promise of a rebate as an inducement for exclusive trade was not improper as other sellers of the article are left unrestrained in offering the same or greater inducements. This opinion of Judge JACKSON, who subsequently became a member of the Supreme Court of the United

States, is cited with the highest approval by this Court in *Northern Securities Co.* v. *U. S.*, 193 U. S., p. 382.

The condition imposed by the Standard Co. that its own trade should be protected was clearly such a reasonable condition as was well within the common law as ancillary to a conveyance of a use—

(b) *Under the Patent Law.*

We have to consider in this case not only the right under the common law, but also the question as to whether or not the Standard Sanitary Manufacturing Company, as *the owner of a patented tool or process of great value in the trade, could license competitors to use it upon such terms as the Standard Company deemed to be for its interest,* both for the benefit of the invention as well as of the trade generally and for the protection of its own business. To deny that the Standard had such a right is not only to deny the fundamental right at common law of the owner of property from disposing of it for his own advantage, but is also a denial of the rights secured by the Patent Laws of the United States. The general right of the owner of a patent to exclude the public or to permit a use upon any terms which he may impose is derived not alone from the common law, but from the Statute. This subject is argued at great length and with the citation of all the authorities on the subject so far as we know in the main brief of the plaintiffs in error. *So far as the public is concerned, the patented invention does not exist* for seventeen years excepting only with the owner's consent.

In the case of *Henry* v. *A. B. Dick Company*, in this Court, decided March 11, 1912, the public of course had the right to sell ink, but so far as the

public is concerned there was no mimeograph except for the consent of the A. B. Dick Company and that consent did not extend to the point of permitting the public to sell ink for use upon the mimeograph. The question whether the notice on the machine was sufficient to charge Henry as an infringer does not enter into our discussion here, nor does the question of jurisdiction depending upon whether the action was on contract or upon a violation of patent rights concern us. We are concerned, however, with the general proposition involved and decided in that case, that the public had no right whatsoever unless the Dick Company granted it under the sale of the machine. In the case at bar, the question is not what rights are granted or withheld by the license contract, but whether the grantor had any right to impose restrictions at all. The public is not harmed by reason of an exclusion from a patented invention because the public never had the right from which it was excluded. The right of exclusion is clearly a property right and even under the common law, as we have before stated, an owner may impose conditions upon vendees and sub-vendees which may accompany the transfer of any right in such property.

In the case at bar, the public have, of course, a right to buy and sell bath tubs, but they have no right to buy or sell one made by the Arrott patented dredge without the consent of the owner of the patent. If the owner of the patent has the right of absolute exclusion, then he must have the lesser right of permitting to use on terms, and if the public want an Arrot tub they must confirm with the terms and conditions.

Let us suppose, by way of illustration, that by the use of the Arrott dredge a pink enameled bath

tub could be produced, differing in no way from other enameled tubs existing only in the matter of color. Let us assume that there was no patent on the tub, but only on the tool as the Government prefers to call it. Would it be argued for a moment that the owner of the tool could not impose as a condition of license a maintenance of prices on his pink tub? The public would have no right to buy or sell or use pink tubs unless the owner of the patent gave them the right, and yet the tub is not patented. The pink tub would not exist but for the invention and the restraint imposed by the inventor does not restrain anything in which the public had a right, and, therefore, it is of no public interest whether such restraint is reasonable or unreasonable. The Arrott tub instead of being pink is inherently better than any other tub on the market. The license in question marked and labeled tub as being a superior article made by the Arrott patent, and it was this article inherently different and better in which the public had no right without the consent of the owner of the patent and which was therefore subject to restraint under the patent law as well as under the principals of common law, the restraint being, as we have heretofore argued, for the benefit of the business of the party who had the sole property right of the invention to dispose of.

In *United States* v. *American Bell Telephone Company*, 167 U. S., at p. 249, the question raised was to the continuance of the telephone monopoly by successive patents. The earlier patents had expired, but later ones had not. It was the combination of the various inventions that had brought the telephone to the higest degree of public utility,

and, of course, the public insisted upon having the most serviceable telephone. This Court said:

> "Each invention has independent rights. it loses nothing because when united with another it results in an instrument more valuable than either alone will give. Suppose that at the expiration of this Berliner patent some new invention shall be made by which, in connection with those already free to the public, an instrument can be manufactured far surpassing in utility that used to-day, and the Bell Company shall purchase that invention, the public, which always insists on having the best and most serviceable, will undoubtedly take the new instrument, and in that way it may happen that what is called the telephone monopoly is practically still further continued. But surely that does not abridge the legal rights of anyone. The inventor of the latest edition is entitled to full protection, and if the telephone company buys that invention it is entitled to all the rights which the inventor had * * * Counsel seems to argue that one who has made an invention and thereupon applies or a patent therefor occupies, as it were, the position of a quasi-trustee for the public; that he is under a sort of moral obligation to see that the public acquires the right to the free use of that invention as soon as is conveniently possible. We dissent entirely from the throught thus urged. The inventor is one who has discovered something of value. It is his absolute property. He may withhold the knowledge of it from the public, and he may insist upon all the advantages and benefits which the statutes promise to him who discloses to the public his invention."

In the case at bar, it makes no difference whether the patent is on a tool or a process or an enamel or whatever it might be, if a manufacturer could

make ware better and cheaper by its use he had a right to want it and get it if he could by contract with the owner of the patent. It makes no difference whatsoever that the licensees abandoned old methods of manufacture. They were not obliged to if they did not want to. The hand process of manufacture was available to any one who chose to use it. The fact that a large number of a large percentage of manufacturers want an improved and less expensive method, is surely not evidence of bad faith and surely the inventor or the owner of the patent has no limitation on his market. The Bell Telephone Company had the right to persuade the public to take the best and latest instrument and there was no unlawful monopoly because the public was persuaded and insisted on the best. So here. The Standard Company or Wayman could induce others to pay royalty for their invention and if their competitors took the licenses because of the utility of the invention, there is no right of public complaint. If the transaction is *bona fide*, then the inventor and his licensees have full liberty of contract, and there can be no middle ground of any partial or reasonable restraint in the use of a patented invention.

(c) *Under the Sherman Act.*

It is of course conceded that there is no conflict between the Sherman law and the rights secured by an inventor under the Patent Law. The Patent Law provides a special Constitutional grant of a right of exclusion for a term of years for a consideration as has been held repeatedly by this Court. This right clearly has not been diminished by the Sherman Act. It has been argued, however, that the patent rights must be construed or limited by the provision of the Sherman Act.

In the recent cases under the Sherman Anti-trust law the full meaning of the act is made quite clear.

We have already considered briefly the rights of an owner under the common law.

In the *Standard Oil* case (221 U. S., 1), the rule of reason is obviously nothing more or less than the appication of the common law principles to the evidence to determine the propriety or reasonableness of any restraint. The learned Chief Justice, after reviewing briefly the common law and the trend of legislation and judicial decision on the subject of restraints and monopolies, adds, that

> "there is no room for dispute that the statute was intended to formulate a rule for the regulation of interstate and foreign commerce"; that "the context manifests that the statute was drawn in the light of the existing practical conception of law of restraint of trade"; that the statute "evidenced the intent not to restrain the right to make and enforce contracts, whether resulting from combinations or otherwise, which did not unduly restrain interstate or foreign commerce, but to protect that commerce from * * * undue restraint"; that is, the contracts or acts were embraced in the provision were not expressly defined, but "undoubtedly contemplating and requiring a standard, it follows that it was intended that the standard of reason which had been applied at the common law and in this country in dealing with subjects of the character embraced by the statute was intended to be the measure used for the purpose of determining whether, in a given case, a particular act had or had not brought about the wrong against which the statute provided."

The Court below held that the license was a price agreement and that all price agreements were void under the Sherman Act—as restraint of trade. Citing the *Dr. Miles Medical Co. v. Park & Sons Co.*

as authority. The case cited holds no such proposition. The opinion merely stating that agreements having "*for their sole purpose the destruction of competition* and the fixing of prices are void"—a very different thing.

From the reasoning of the learned Chief Justice, in the Standard Oil case, it is clear that the question presented in any case of an alleged violation of the Sherman Act is a question of fact, and that it is to be determined by the effect of the acts established to have been done or about to be done upon the public as a whole. It follows that an increase of prices or a reduction of prices or a maintenance of prices at an existing level is not of itself an undue restraint of trade. It is merely an element to be considered. A reduction of prices, while ordinarily of benefit to the public, nevertheless if done pursuant to a copsiracy with the object of driving out competition is a violation of the act as was held in the Tobacco case. It naturally follows an increase of prices, while generally against the public interest, yet, if it have the purpose and effect of increasing competition, may be perfectly proper and lawful. The virtue of the act lies in the fact that competition is not diminished and, therefore, commerce is not restrained. Moreover, if the increase in price was only a reasonable restraint for the protection of the retained business of a grantor and was ancillary to the conveyance—it would clearly be valid at common law and therefor under the Sherman Act.

Upon the argument of the Tobacco case, the learned Chief Justice asked the Attorney General whether or not manufacturers should be compelled to continue a ruinous competition, a question which the Attorney General failed to answer. We submit that if by a continuance of such a competition

there results a condition whereby competition is lessened either by the driving out of the smaller concerns or by the exhaustion of the resources of the larger ones, then a situation has arisen which is identical with that which the Sherman Law is designed to prevent and what the law is designed to prevent the parties may themselves prevent by agreement or otherwise without continuing an unlawful act. The Sherman Law is clearly designed to develop the trade and commerce of the American people. Its object is to permit of those things which will develop and increase our trade and commerce and to prohibit those things which tend to diminish the activities of our citizens. A reasonable restraint in one direction, if it permits of increased activity in another, so that the business as a whole is developed, is clearly not against the policy of the Sherman Act and is, therefore, permissible.

The public's interest does not concern itself alone with the question of price. It is just as much, if not more, concerned with getting full value for its price. As the learned Chief Justice stated, one of the evils of monopoly was deterioration in quality. Congress has done much to protect people against deterioration in quality in food products, drugs and the like; undoubtedly because the public interest is thereby conserved. Any combination or agreement which prevents such a deterioration is necessarily lawful. A reasonable increase of price, calculated to and which does have the effect of promoting competition in quality and thereby the interest of the public as a whole is essentially proper. A competition in quality, and style, and variety, may in some stages of an art or business be vastly more desirable to the interests of the public than a competition in price. A protective tariff is de-

signed for the development of infant industries by permitting a higher selling price. The Sherman Act is not intended to operate against other Governmental policies but rather to be concurrent with them. An industry, which is not fully developed, is to be encouraged, and protected, and, we even go so far as to say, competition in such an industry should be reasonably restrained until the industry has an opportunity of developing and growing to the point where the public will have the benefit of a full-fledged natural competition, otherwise the industry may be destroyed almost before it is begun.

So far as the Sherman Act is concerned if we disregard the Patent Law, this Court has before it, the broad proposition as to whether or not these defendants are not doing those things which tend to the better development and growth of the business in sanitary enameled iron ware, and in a determination of this question there must be considered not merely the result of an isolated act or paragraph of an agreement, but the effect of the acts of the defendants and their designs and purposes as a whole. In the language of the Standard Oil case, the question is "whether or not the parties in good faith are endeavoring to carry out the *legitimate purposes of reasonably forwarding personal interest and developing trade*," or whether they are doing acts which are "of such a character as to give rise to the inference or presumption that they had been entered into or done with the intent to do wrong to the public."

We submit that these matters must be determined upon the evidence presented to the Court. The record in this case shows beyond question that the purpose was the elimination of seconds and the guaranteeing to the public of a dependable article

which would find favor with the public and thereby increase the trade and commerce in this class of goods. These objects can only be accomplished by uniformity of prices and such a uniformity as was provided in this case was not accomplished by any increase in price. Under such circumstances, can it be doubted that the public interest has gained more by the acts of the defendants than it could possibly have lost? This Court must deal with the question as it is to-day, not as the trade in this article may be five years from now. The Sherman Act is a continuing act. The Courts may always be appealed to if combinations become oppressive, but when they are engaged in doing those things which are for the benefit of the public they should not be enjoined.

The Court below holds that the Arrott patent is a valuable and useful invention reducing the cost of manufacture—and this counsel for the Government concedes, but claims that it is not a necessity. Such a claim may be made of any invention. Railroads are not a necessity, for people can walk, is an equally true statement, and it is doubtless true that walking is interfered with to a considerable extent by the railroads, but it does not follow that railroads should be enjoined because they interfere with walking or with the sale of "horses or automobiles. The argument of the Government is just about as sound. The man who improves an article is an inventor and the right of the inventor to use his improvement is not dependent upon any such question. The absolute necessities of life were presumably furnished in the Garden of Eden and everything that has been accomplished since is not a necessity but merely possibly an improvement. However, we do not believe that this Court is going to stand in the way of improvement or to limit the right of an inventor to

get all he fairly can out of his invention. The inventor's right is a constiutional right and it is not infringed upon by the Sherman Act, as has been repeatedly held. The right of an inventor is as we have stated not a grant but a right of exclusion. It does not follow that the inventor has the sole right of exclusion. Municipal and police authorities for instance have a right of exclusion as well as the inventor of an article, and while the inventor of a violent explosive may exclude the public from using it without his consent, it does not follow that the police regulations must allow the inventor to store it within the limits of a city. The cases cited upon the brief of our learned associate, on the right of an inventor are very complete and full and for that reason we will not take them up in detail. We will content ourselves with stating that the principles laid down in the Rubber Tire cases, the Crown Cork case, the Copygraph cases and the Phonograph cases now approved by this Court in the Dick-Henry case must be deemed to be the law on the subject of the rights of the inventor, and from these cases it is easy to adduce the proposition that an inventor may sell or dispose of his invention to one or several people; that his market for his invention is not limited; that his vendee acquires all the right of the inventor, or so much as the inventor may grant; that the owner of a patent has a right to exclude the public from the use of his invention, or as a condition of permitting them to use his invention, he may impose terms he sees fit.

There is no adjudicated case limiting the power of the inventor in this respect. The right of the owner of a patent is not limited to the patented article itself, but can extend anywhere within what may be properly described the field of the invention.

The owner of the Arrott patent having a device which would enable enameled ware to be produced cheaper and better than by any other device can impose upon his licensee any terms which he may deem to be to his benefit and advantage. That is what his patent is for. He can impose any condition which he thinks will develop or increase the demand for the article produced by his process and consequently increase the demand for his invention. It is a matter of no consequence whether the enameled tub itself is patented. If he can make the production of the enameled tub dependent upon the use of his device, it is perfectly legitimate and proper for him to do so. He can monopolize his field in any way which lies within his power, but his power is the right of exclusion.

The question was asked upon the argument below whether the owner of a patent may use his patent as a subterfuge to violate the Sherman Act. We then said and now say frankly that we do not believe that he can. The act of an inventor in excluding the public, from caprice or any other motive, is beyond question. He may impose any terms he may see fit as to the right to use his invention. If manufacturers really desire to use an invention, they must submit to whatever terms are imposed; but if a number of manufacturers do not in reality want to use an invention but agree to take licenses merely in order that they may defeat the Sherman Act, then we believe that the lack of good faith would subject the manufacturers to such injunctive relief as would protect the public, but the public's right does not extend in the least degree to a patented article or to an article produced by a patented process or any article which is exempt from the public's right. It follows, therefore, that in order that it may be found that there is a

subterfuge there must be a restraint of commerce and an article in which the public have a right, as well as the element of bad faith on the part of the manufacturers. The owner of the Arrott patent could not use his device as a means of bringing about a monopoly in lead pipe, for instance, because he has no right of exclusion relating to lead pipe; but if he uses his right of exclusion only to such articles as are produced by the use of his patent, then the public are not excluded from anything in which they have a right, and it may not be said that there is a subterfuge. We believe that the logical answer to the question is that if the inventor and his licensees are acting within the limit of the domain of the inventor, there may be no improper use of the right of exclusion.

It must be presumed that the acts of the owner of the invention were in good faith and were intended for his benefit and for the benefit of his licensees and the record is without suggestion of fact to the contrary. Every act done or agreement entered into fairly appears to have been for the mutual benefit and advantage of the licensor and his licensees. There is no one thing which the licensees agreed to do which would not benefit the licensor. The Court may not question a motive upon a mere suggestion. The opinion of a competitor who refuses to take a license is not evidence and the expressions in the letters of the various defendants and in their statements made at the time and before this suit was brought, show clearly that their object was the elimination of seconds and the use of an invention which would reduce the cost and the amount of defective produce. It would not alter the situation if an incident of the arrangement was a prevention of ruinous competition, for Wayman would have a right to prevent anything

which would interfere with his realization. The Court below could not say that the use of the Arrott patent was a mere subterfuge when every element of the agreement clearly results in a benefit to the owner of the invention.

It is very clear, however, from the adjudicated cases that the caprice or whim of the inventor within the realm of his domain is not subject to judicial review and is not evidence upon the question.

In the case at bar the acts complained of by the Government relate solely and exclusively to enameled ware and the Arrott patent is valuable and relates directly to such ware. The manufacturers wanted to use it and were infringing. The Colwell Company had already taken a license. How then can it be said that its use is a subterfuge? It does not make any difference whether the Standard Company owned the patent and transferred it to Wayman nominally, or whether Wayman was the real owner. Whatever Wayman could do the Standard could do in law practically and vice versa. The other manufacturers might not be willing to take a license to use the patent if their books would be subject to examination to determine what royalties should be paid. Practically, it may have been better for Wayman to hold the patents, but as we have stated, that is a matter of no consequence and is not a fact to be considered in the least. The owner of a patent may certainly get the people together who would be likely to use his invention and persuade them by any means in his power to adopt and use his device. It does not make any difference if the manufacturers combine and agree to do it or whether they do it singly. It is the legitimate field and domain of the invention. No inventor could persuade a manufacturer to use his device unless he can show to him some benefit to be

derived by so doing. If the benefit was the reduction in cost, the production of a better article or the limitation or reduction of defective material produced, it was all proper to be held out to the manufacturer as an inducement to use the device, and particularly proper would be any scheme which would protect and develop the business in the article to which the patent relates.

It is claimed that the resale provision in the Wayman license goes beyond the power of the patent protection. We submit that this proposition is obviously erroneous. The owner of the patent desiring to increase his royalties would monopolize the market so that all the ware produced and sold paid tribute to his inventive genius. He would therefore, shut out by every means in his power any article which could be used as a substitute for that which paid tribute to him, and it is his legitimate right to do so. If other manufacturers would not license his invention and pay him tribute, it would be well within the limits of his power to say to a jobber, "if you do not sell exclusively the superior ware made by the use of my invention, I will not let you sell it all." The Constitution of the United States directs legislation to stimulate invention and the Acts of Congress passed pursuant to the constitutional provision are acts tending to stimulate the best that is within the American people. The interest of the public generally is improvement and advancement and an invention designed to produce a superior article at a lower cost requires that the public shall, if necessary, give up some of its rights temporarily in order that its ultimate benefit and advancement may be insured. There is no act or thing established by the evidence which can be said to overcome the pre-

sumption in favor of the acts of the owner of the patent in this case.

The acts of Wayman in getting the manufacturers together were perfectly proper acts for the owner of the invention. His consulting with them as to the terms of a uniform license raises no presumption of impropriety. If the owner of an invention wanted to get all the manufacturers to use his invention, he certainly would be obliged to make his licenses uniform, and he certainly would consider the desires of his licensees as well as his own desires; and to get them together to determine what form of license would be uniformly satisfactory is rather a stroke of genius than evidence of anything that is improper. Manufacturers are naturally suspicious of one another and are desirous of getting terms or conditions better than their competitors. Therefore, the acts of Wayman in making use of meetings of the Trade Asosciation to talk to them and show his desire of treating them all alike and arranging his licenses so that they would receive protection and at the same time the patent would receive its due does not raise any presumption against the defendants. This question must, like the Sherman Act, be viewed in the "light of reason" and reason demands that the result of the acts of the defendants should be considered rather than the means by which they were brought about.

The result of the acts done by the defendants is this. The Arrott patent was used by all the manufacturers instead of by one or two. The manufacturers produced a better article and agreed not to sell defective articles to the injury of the public and the deterioration of the business, one of the evils against which the trust legislation was directed, as we have pointed out. Jobbers in enameled ware were required to deal exclusively in the

licensed ware, otherwise they could not get it at all. By this means, the public in dealing with a jobber handling licensed ware could know that it was getting a guaranteed article upon which it could rely. The public paid no more, according to the evidence, for a superior article than it had paid for a questionable product, but the advantages to the manufacturer and to the jobber were that defective goods were eliminated, but business was made uniform and the use of the article would become extended and the trade increased. We are not dreaming. We are stating the evidence that is shown in the record and it is the only conclusion that could be drawn. There is no evidence in the record that any increase in price was contemplated or threatened, and more particularly, there is no evidence that anything was done by any one of the defendants which would be an unreasonable or undue restriction of commerce. In short, there is no evidence of any undue enhancement of prices made or contemplated, there is no evidence of any stifling of competition, and there *is* evidence that the acts of the defendants were directed against a deterioration of the article and for its improvement. When we say there is no evidence of a stifling of competition, we point out that the defendants by improved methods could so lower the cost of their product as to drive out the old-fashioned methods and while this might be argued as evidence, nevertheless, it is such a stifling as is due to an improvement in the art the legitimate domain of an inventor and one which works for the ultimate benefit of the public. The killing of competition which persists in the use of antiquated and old-fashioned methods is a public service and the defendants should be encouraged to render that service. However, the Sherman Act is not directed to compel pro-

ple to do things for the benefit of the public. It is only directed against preventing injury to the public.

THIRD. THE RIGHT OF A PERSON TO TAKE A LICENSE FROM THE OWNER OF A PATENT IN GOOD FAITH FOR USE IN HIS OWN BUSINESS AND FOR HIS OWN ADVANTAGE WITHOUT REGARD TO WHAT USE LICENSE AGREEMENTS MAY BE PUT TO BY OTHERS.

The Colwell Lead Company, as we have pointed out in the evidence, is a jobber of plumbing supplies and manufactures solely for its use and it sells directly to plumbers and to the public. It does not sell to other jobbers and as stated its business is strictly local.

The Colwell Lead Company took a license from the Standard Company, then the owner of record of the patents, in 1909, more than a year prior to the license agreements in question were made. It installed a dredge at its factory and used the same. It was not a party to any of Wayman's efforts to procure uniform license agreements upon conditions which should eliminate defective ware and should protect the business of the Standard Company, but after Wayman had licensed the other manufacturers he came to the Colwell Lead Company and told them they would have to renew their license with him; that the license which the Colwell Company had with the Standard Company was subject to revocation at any time, being merely an indefinite permission to use. The Colwell Company then and there told Wayman that it did not sell to jobbers, and was not concerned with any of the price restrictions in Wayman's printed form of license, in which Wayman acquiesced, and Way-

man thereupon wrote a letter or additional clause to accompany the printed form of license to adopt it to the needs of the Colwell Lead Company, and the Colwell Lead Company took a license in the form in which it could get it from Wayman and went on with the business in its usual competitive way, as the evidence shows. Had not the Colwell Company the right to contract to use the Arrott dredge by taking an agreement from Wayman for the continuance of its license? Did the Colwell Company become charged with responsibility for any agreement among manufacturers to restrain trade with jobbers? What difference did it make to the Colwell Company what price jobbers paid manufacturers or what contract other manufacturers exacted of jobbers? The Colwell Company never sold to jobbers, never contracted with a jobber, never asked a jobber to sign a contract for obvious reasons. Neither did it impose upon any jobber a condition or price at which it should sell to plumbers, nor did the Colwell Company itself make any contract or agreement respecting the price at which it should sell to plumbers. It simply continued the use of the Arrott dredge and continued to manufacture enameled ware for the use in its own business and continued to sell the same as before. When a plumber came to the Colwell Company's warerooms and asked for a complete equipment for a bathroom for a private house or for a row of apartments, the Colwell Company gave him a figure for piping, fixtures, enameled ware and all complete, and in competition with all the other jobbing houses in the vicinity. To say that the Colwell Company's business was restrained by any act or interfered with is an utter absurdity.

We contend that the Colwell Company had a perfect right to take a license in good faith for its

own use and that it makes no difference whatsoever what use was made by others of the license agreements of Waymanic.

FOURTH. THE SERIOUS PREJUDICE OF THE DENIAL OF THE MOTION TO ENLARGE THE TIME FOR TAKING TESTIMONY.

It is to be observed that upon the taking of the testimony in behalf of the defendants, the Colwell Lead Company, in an effort to substantiate the allegations of its answer and for the further purpose of showing that the alleged combination was not in unreasonable restraint of trade, subpœnaed a number of the individual defendants in the proceeding as witnesses for the purpose of establishing by abundant affirmative proof that when the advantages of the Arrott invention became known, other manufacturers began to infringe; that the Mott Iron Works infringed and were sued and enjoined; that J. M. Koehler Sons Company, Louis Lipp & Son and the Iron City Manufacturing Company were all infringing, none of them being party defendants to this suit; that the Blairsville Enameled Iron Works, not a party to this suit, applied for a license to use the Arrott dredge; that the McCrum-Howell Company, one of the defendants had considerable correspondence with the Standard Company in an effort to procure a license, all tending to show the value of the invention and the desire on the part of these defendants to use the same in good faith; that the Standard Sanitary Manufacturing Company, the owner of the patents having a large retail business direct with the plumbers, the volume of which was greater than that of all the other defendant manufacturers put together, was ap-

proached by Wayman with the proposition that the other manufacturers, its competitors, could be licensed upon such terms as would protect the Standard Company's business; that Wayman represented to the Standard Company that the infringements suits could be stopped, the rights of the owner of the patent established, defective ware driven from the market and the Standard's retail business with the plumbers fully preserved and protected, and that the option given by the Standard Company to Wayman was not only a verbal option, but a written option to enable him to carry out, if he could, the objects which he said could be accomplished.

An examination of the record will show that the witnesses so subpenaed were Max Goebel of the J. L. Mott Iron Works (Vol. 3, p. 127), Howard T. Gates and Lloyd G. McCrum of the McCrum-Howell Company (Vol. 3, pp. 136, 145), Francis J. Torrance, Theodore Ahrens, W. A. Myler and E. L. Dawes of the Standard Sanitary Manufacturing Company (Vol. 3, pp. 152, 160, 171, 5191; also Thomas Walker and Alexander C. Walker of the McVay & Walker Company (Vol. 3, pp. 181, 190). When these witnesses appeared and were sworn, counsel for the Government notified each of the witnesses that he was a defendant in a criminal proceeding in the Eastern District of Michigan; that he was under indictment in that District charged with a crime under the Laws of the United States, punishable by fine or imprisonment or both, and notified the witnesses in effect that they testified at their peril and advised the witnesses in effect not to testify.

The witness refused to testify *upon the advice of the counsel for the United States* (p. 166, Vol. 2, *et al*), and we then made an application to the Court to compel these witnesses to testify. Upon

this motion, *the counsel for the United States appeared in opposition* and argued in behalf of the witnesses that they could not be compelled to testify because there was no immunity unless the witnesses were subpœnaed by the Government, and that, therefore, the witnesses' right to avail themselves of the Constitutional privileges was absolute, and that the motion should be denied.

The evidence which these witnesses could give, they did give upon the trial of the indictments at Detroit in February and March, 1912, and we challenge the counsel for the Government to deny that such evidence was given upon the criminal trial which established the facts we have above referred to.

The effect of the action of counsel for the Government was to affirmatively take such action as to leave the Colwell Lead Company without the evidence which constitutes an absolute and complete defense to this proceeding and was an uncalled for interference unworthy of the Department of Justice of the United States of America. A motion was duly made in behalf of all the defendants, including the Colwell Lead Company for an enlargement of time to complete proofs based upon the action of the counsel for the Government as stated, and this motion was denied. This denial was error, and we believe that this Court should now remand this case to the Court below that this additional evidence may be taken. The force and effect of the evidence thus easily procurable is apparent when it is considered as we have argued that at common law the Standard Sanitary Manufacturing Company being the owner of an invention could license the use of that invention upon any terms which it deemed necessary and proper for the protection of its retail business with the plumber. The Standard

Company selling directly to the plumber did of itself protect that trade in its sales to jobbers by prohibiting the jobbers from selling at a lower price than the Standard itself maintained. When other manufacturers sought to obtain the right to use the Arrot patent, the Standard Company had an absolute right at common law to grant licenses to protect its own business with the plumber by appropriate provisions and the provisions in the license in question are purely ancillary to the license agreement and are purely such reasonable restraints for the protection of the business of the Standard as the common law permits.

The record of this case is sufficient to establish the facts, but not nearly so clearly as we would like to have them. For instance, the Government alleges in its petition that the defendants did not sell except to jobbers. This is denied under oath pursuant to the requirements of the bill and the answer under oath has the effect of evidence and there is nothing to the contrary. It appears affirmatively that the Standard Sanitary Company, the Colwell Lead Company and other of the defendants sell to plumbers, but the quantity and importance of their business in that respect is not shown. When it is considered that under the patent law the owner of an invention has a right to exclude the public from the use of his invention except upon terms, the propriety of the terms so imposed becomes of importance. If upon the evidence there is a common law right to impose the terms, regardless of the patent law, surely the right would be upon the loss in a case arising under the patent law.

FIFTH. THE COURT BELOW ERRED IN HOLDING THAT THE COLWELL LEAD COMPANY WAS ENGAGED IN INTERSTATE COMMERCE WITHIN THE MEANING OF THE SHERMAN ACT.

This question is raised by our third assignment of errors. As we have before pointed out, the Colwell Company has a wareroom in New York and one in Massachusetts. Its factory is in the suburbs of New York at Elizabethport, N. J., where is manufactures lead and iron pipe and enameled ware. This enamel ware it ships to its two warerooms and is there sold. It does not have agents to go out and sell in various States or anything of that kind, as alleged in the petition. The evidence is that it does not sell in any such manner, but that its trade is purely local in the vicinity of its warehouse. When asked if it shipped goods to New Jersey, Dr. Duryea said yes it did; that when a plumber from Jersey City came to the warehouse and bought goods and asked that they be shipped to his place of business in Jersey City, they would certainly be shipped there, but this trade, as we have before stated, is not Interstate commerce within the meaning of the Sherman Act. The goods transported from the Colwell Company's factory in New Jersey to its warerooms in New York involved no change of ownership on the part of the goods, nor was there any agreement license or otherwise affecting such transportation. It was purely the convenience of the Colwell Lead Company which led it to manufacture in New Jersey and to transport the goods from the factory to the warerooms in New York. It was a thing which was due purely to the geographical location of New York City and the economy of manufacturing in the suburbs instead of in the City itself. After the goods were in the warehouse in New York, they become the subject of sale

and any restrictions, which it may be urged were placed upon the business of the Colwell Company by the license system in question, did not become operative upon the property until it became the subject of sale.

Now, the sales by the Colwell Company were local. They were made to people who come to the warehouse, as the evidence shows without dispute. People came to the warehouse and bought and presumptively paid for the goods. The goods were shipped as per the purchaser's instructions. Some of these goods were shiped to Jersey City, but when they were shipped *they were the property of the purchaser* and not the Colwell Lead Company. No sales were made outside of New York and no contracts of sale were made outside of New York. The business was purely and simply a local business and one subject only to regulation by the Statutes of the State of New York. A seller's act in delivering merchandise to a common carrier is not any part of the Interstate transportation and does not make the goods the subject of Interstate commerce. The fact that the sale is made with a view of the goods being transported after the sale does not make the sale Interstate (*Kidd* v. *Pierson*, 128 U. S., 1; *United States* v. *E. C. Knight Co.*, 156 U. S., 1; see also *Hopkins* v. *United States*, 171 U. S., 578; *Anderson* v. *United States*, 171 U. S., 604).

Respectfully submitted,

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No. 554.

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

STANDARD SANITARY MANUFACTURING COMPANY AND OTHERS, APPELLANTS,

v.

UNITED STATES OF AMERICA, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

BRIEF FOR THE UNITED STATES.

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In the Supreme Court of the United States.

OCTOBER TERM, 1912.

STANDARD SANITARY MANUFACTURING Company and others, appellants, *v.* UNITED STATES OF AMERICA, APPELLEE. } No. 554.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is a proceeding under the Sherman antitrust law (26 Stat., 209) to put an end to an unlawful combination restraining interstate commerce in sanitary enameled ironware, such as bathtubs, washbowls, lavatories, sinks, and kindred articles indispensable to every householder who wishes to equip his home with modern plumbing conveniences.

The original petition was filed July 21, 1910, in the United States Circuit Court at Baltimore against 16 corporations and 34 individuals; the answers, in

September following. An examiner was appointed; voluminous proofs were taken; the Attorney General certified that the case was important; it was argued in June, 1911, before the two circuit judges of the third circuit, Judges Goff and Pritchard, and District Judge Rose; October 13 following the opinion of the court, by Judge Rose, was filed, one judge dissenting without opinion. The final decree enjoined all the defendants except two, as to whom the petition was dismissed.

Notwithstanding the considerable testimony taken, the case may be reduced to two questions of law:

First. May the owner of a patent on a tool used in the manufacture of an article not patented, by licensing all manufacturers of that unpatented article to use the patented tool in the process of manufacture, determine the prices and terms under which the unpatented article shall be sold by manufacturers to jobbers and wholesalers, and also fix the prices and terms of sale from the wholesaler to the retailer?

Second. May all the manufacturers of an article not patented, which they have been selling throughout the United States in competition with each other, destroy competition among themselves by entering into uniform license agreements to use in the manufacture of the unpatented article a patented tool, and by incorporating in such agreements uniform non-competitive prices and terms of sale and resale of the unpatented article?

Appellants contend that the answer to each of these questions is the affirmative. They maintain

that the patent laws vest in the patentee as rights the privileges here claimed. We aver the contrary. We assert, further, that the so-called license arrangement adopted by appellants was merely a hocus pocus, a thimble-rigging device, by which they expected to trick and bamboozle the public and the courts.

Throughout the discussion of the questions of law and fact involved in this case it is essential to keep one fact in mind, namely, that the noncompetitive prices and terms of sale and other restraints of which the Government complains relate to commerce in articles not patented. The only patents mentioned in the pleadings and evidence are patents upon tools used in the manufacture of unpatented articles. Not one of the restrictions complained of has to do with the sale and distribution of the patented tool, but they all directly relate to and restrain commerce in unpatented enamel ware in the making of which the patented tool is used.

This case presents the latest and therefore most fashionable contrivance for evading the rules prescribed by the Sherman Act in the conduct of interstate commerce, and particularly "the rule of free competition among those engaged in such commerce." (Mr. Justice Harlan in the Northern Securities case, 193 U. S., 331.) Since that act was passed in 1890 this court has had occasion to consider various forms of combinations and monopolization. The earliest form was that of an unincorporated association with a constitution and by-laws accomplishing

unlawful restraints, condemned in the Addyston Pipe case (175 U. S., 211), *Montague* v. *Lowry* (193 U. S., 38), Trans-Missouri Freight Association (166 U. S., 290), and Joint Traffic Association cases (171 U. S., 505). Destruction of competition between manufacturers through the adoption of a common selling agency given the form of a State corporation, another method of combination, was held unlawful in the Continental Wall Paper case (212 U. S., 227). The holding company as a means of suppressing competition whether between railroads or between industrial companies received the same judgment in the Northern Securities case, *supra*, and in the Standard Oil case (221 U. S., 1). In *Dr. Miles Medical Co.* v. *John D. Park & Sons* (220 U. S., 373) this court pronounced unlawful a scheme of so-called agency contracts under which a manufacturer attempted to establish uniform prices on all sales by wholesalers and retailers of proprietary medicines manufactured by him. In the case against the Tobacco Trust (221 U. S., 106) it was held that the American Tobacco Company and five other companies organized under the laws of New Jersey were unlawful combinations, among other reasons, because they had acquired monopolistic power with a wrongful purpose, and by methods inconsistent with a natural and normal expansion of business. In *United States* v. *Terminal Railroad Association et al.* (224 U. S., 383) it was decided that a terminal association of railroads is an illegal restraint so long as it does not act as the impartial agent of every line which, owing to

geographic conditions, is under compulsion to use its instrumentalities.

The case at bar is an instance of an attempt to conceal the common garden variety of an agreement fixing prices and interfering with competitors under the guise of a legitimate licensing arrangement for the use of patents. Instead of embodying the unlawful restraints in the constitution and by-laws of an association of manufacturers, the appellants incorporated those restraints into so-called "license agreements" under patents. They devised uniform contracts abounding in terms taken from the patent laws incorrectly used with the object of hoodwinking the public. Each corporation defendant entered into one of these "license agreements" with the same contracting party to whom the three patents had been transferred for that purpose just before the signing of the contracts. As each of the contracts was identical with every other contract as to prices, terms, and conditions of sale the defendants destroyed competition as effectually as they would have suppressed it if, instead of contracting with a third person, they had contracted with each other by signing the articles of an unincorporated association, or by entering into an arbitrary price agreement.

There are five volumes of record. Volume A contains the pleadings, opinion of the lower court, and assignment of errors; Volume I, Government's testimony; Volume II, Government's exhibits; Volumes III and IV, defendants' testimony and exhibits and Government's rebuttal testimony.

SUMMARY OF THE PLEADINGS.

(a) The petition.

The petition names as parties defendant 16 corporations and 34 individuals, officers of the several corporation defendants. (A, 2–5.) The factories for the manufacture by appellants of sanitary enameled ironware, such as bathtubs, washbowls, lavatories, and sinks, are located in 10 different States. (A, 5.) The defendants sell and ship these products throughout the United States and abroad. (A, 6.)

It is alleged that the defendants control 85 per cent of the total interstate and foreign trade and commerce in this ware and that they would be in active competition as to prices and other conditions of sale if they had not entered into the unlawful combination described in the petition. Six independent manufacturers, not defendants, whose names are given, are stated to comprise all outsiders. (A, 6.)

After charging the practices habitual to persons observing unlawful monopolistic agreements, viz, elimination of competition, increase of prices in sales by manufacturers to jobbers and in resales by jobbers to plumbers, uniform contracts, the holding of jobbers to fixed resale prices, mutual cooperation in fighting and concentration against independent manufacturers and outside jobbers, the imposing of penalties upon members of the combination for breach of any of the rules established, the petition proceeds to describe more specifically the manner in which the defendants attempted to disguise their unlawful

project under the mask of an ostensible licensing arrangement to use certain patents. It is this feature, namely, the form adopted, which distinguishes this combination and monopoly from those heretofore condemned by this court. The petition describes the scheme as follows:

> By the conditional assignment, for a nominal consideration, of three patents on certain tools owned and used by three of the defendants in the manufacture of some of their products of enameled ironware to defendant Edwin L. Wayman, who was selected as assignee by agreement of all the defendants, and by a system of license agreements, to manufacture and sell enameled ironware, entered into ostensibly under those patents by all the corporation defendants, and other license agreements to sell, entered into by jobbers, defendants have sought and are now seeking to accomplish, and are accomplishing, all the unlawful objects, purposes, and results hereinabove described.
>
> * * * * *
>
> As previously stated, all the defendants were and are manufacturing sanitary enameled ironware, such as bathtubs, washbowls, lavatories, drinking fountains, sinks, closets, etc., and were and are selling and shipping their products throughout the United States and abroad and so are engaged in interstate and foreign trade and commerce, and have been so engaged for many years. These products were and are manufactured under different patents and a variety of processes

by the various defendants. All of the defendants determined and agreed that three competing patents, being patents for tools called "dredger for pulverulent material," "pneumatic sieve," and "enameling powder distributor," respectively, should be assigned by three defendants, each of whom owned one patent, to defendant E. L. Wayman, each patent for a nominal consideration and subject to reassignment at the expiration of a short term on the demand of the party making the assignment to Wayman. In accordance with this agreement, the following patents were assigned to Wayman: The Arrott patent, No. 633941, by the Standard Sanitary Manufacturing Company; the Dithridge patent, No. 949625, by the J. L. Mott Iron Works; the Lindsay patent, No. 939918, by L. Wolff Manufacturing Company.

These patents and the tools they cover, while useful and valuable in the manufacture of sanitary enameled ironware, are not essential thereto. * * * The sole purpose of the assignment was that the patents might screen the real intent of the defendants and serve as a mere subterfuge and a device to evade the Sherman antitrust law.

Before the assignments were made all the defendants had agreed upon all the essential features of the licensing arrangement. They had determined upon all the principal conditions and terms of the contracts to be entered into by the manufacturers with Wayman, ostensible licensor; upon the jobber's licensing agreements; upon the resale prices at which jobbers

should sell in interstate commerce to plumbers, retailers, and consumers. They had agreed upon a price list wherein were stated all the articles of sanitary enameled ironware made by all of the defendants and in which were specified the prices at which those articles should be sold by the defendants throughout the United States and the resale prices which jobbers should observe in making sales of the same articles to their customers. In other words, this price list, arrived at by agreement and consultation between defendants and without competition between them, fixes the price which every user of sanitary enameled ironware in the United States must pay for every article manufactured by the defendants.

* * * * *

To repeat, all the terms and conditions of all the contracts and agreements which together make up the licensing arrangement had been agreed upon by all the defendants prior to the assignment of the patents to Wayman. Furthermore, each defendant stipulated as a condition to his executing the license agreement that all the others should execute a similar agreement. No defendant would have executed the agreement unless he had been certain that all the other defendants would execute it. The agreement on the part of all the defendants to enter into the license arrangement was a condition precedent to the assignment of the patents to Wayman. There would have been no such assignment to Wayman and no licensing agreement with any if all the corporation defendants had not agreed to

> go into the scheme. In fact, all the parties to the agreement were not and are not seeking the use of a valid and essential patent, necessary in the carrying on of their business, but were and are establishing and maintaining a price-fixing plan designed to eliminate all rivalry between them and deprive the public of the advantages which flow from free and unrestrained competition.

Attached to the petition were copies of the manufacturers' license agreement with Wayman (A, 24), the agreement between the manufacturer and the jobber (A, 28), and certain pages of the price list (A, 33). Other exhibits attached to the petition evidenced the manner in which the licensing arrangement was arrived at (A, 13–23) and illustrated the methods of the defendants and the effect of the combination upon independent manufacturers and jobbers who did not sign the license agreements (A, 37–42). All these exhibits to the petition were introduced and proved by the Government during the taking of testimony. Therefore they may properly be considered parts of the petition.

THE PRAYER.

1. That it be adjudged that the defendants have entered into a combination and conspiracy in restraint of interstate commerce in enameled ware and have attempted to monopolize that commerce, and that they be enjoined from doing anything in furtherance of such combination. (A, 11–12, pars. 1 and 4.)

2. That it be adjudged that the manufacturers' license agreements, the jobbers' license agreements, and the price list were planned for the purpose of enabling the defendants to carry into effect the unlawful combination, and that such agreements and price lists be declared illegal and the defendants be enjoined from observing or enforcing them in any manner. (A, 11, par. 3.)

3. That it be adjudged that the patents were acquired by Edwin L. Wayman solely to effectuate the unlawful objects of such conspiracy, and that he be enjoined from exercising any control over the interstate business of the defendants by virtue of his holding such patents. (A, 11, par. 2.)

4. That the defendants be enjoined from entering into any similar combination. (A, 12, par. 5.)

(b) The answers.

(A, 43–97.)

The defendants filed a number of answers, all verified. Edwin L. Wayman, assignee of the patents and the licensor, filed one answer; the three corporations, with their respective officers, which had assigned the patents to Wayman, joined in another answer; all the other defendants, corporate and individual, filed a third answer, the same counsel appearing for all the defendants. Subsequently the Cahill Iron Works and the Kerner Mfg. Co. and their officers withdrew their answers and filed new answers admitting the charges of the petition and consenting

to a decree. They, of course, do not appeal. The Colwell Lead Co. also withdrew its answer and filed a separate answer. This company, an appellant here, will be referred to later. (Infra p. 59.)

The answers deny specifically every allegation of the petition except that they admit that certain exhibits attached to the petition (Nos. 8, 9, and 10; A, 24–37) are generally correct copies of the manufacturers' license agreement, the jobbers' license agreement, and a part of the price list (A, 59). These exhibits whose execution is admitted by the answers would without more establish the unlawful combination. Defendants aver that each of the corporation defendants has *separately* taken a license from Edwin L. Wayman under the three patents enumerated (A, 56), which licenses are similar to the manufacturers' license agreement attached to the petition and that licensed sanitary enameled iron ware is sold by the defendants to jobbers under agreements similar to jobbers' license agreement attached to the petition.

Except as above stated, the defendants deny all the allegations of the petition.

For a further and "for a more complete answer" the defendants describe the process of enameling sanitary enameled ironware and the use therein of the dredger manufactured under the Arrott patent. Briefly stated, an enameled-iron bathtub is made by sifting over the tub, red-hot from the furnace, a powder containing most of the ingredients of glass.

This powder melts and fuses with the iron and gives to the latter when cooled a hard, white, glossy surface. Prior to the invention of the Arrott patent the enameler caused the powder to flow by tapping the handle of the sieve on the upward and downward strokes of a loop of iron passed over the handle. Arrott devised an automatic tapper concealed in the handle of the sieve and operated by compressed air. The workman by touching a valve button secures a rapid, continuous, and uniform rapping action, and is freed from the manual labor which the hand tapper necessitates.

The two other patents referred to in this case were also patents for dredgers or pneumatic sifters, each, however being operated by electricity and differing in certain details of construction from the Arrott dredger.

These three patents prior to May, 1910, were severally owned by three corporations defendants, as stated in the petition.

The defendants admit that they entered into uniform agreements with defendant Wayman, to whom the patents were assigned early in May, but they stoutly deny that the uniform agreements were the result of any understanding or arrangement between all the defendants, averring that each manufacturer entered into an agreement with Wayman independently of the other manufacturers. In other words, they contend that each license was the result of *individual* and not *collective* action.

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Judge Rose, in an exhaustive opinion sustained the contentions of the United States on every point. We refer to that opinion and to the detailed and accurate statement of facts therein, which we adopt. (A, 103–125.)

The decree, after reciting that the defendants had entered into a combination in restraint of trade and were attempting to monopolize such trade, adjudges and decrees as follows (A, 126):

> Fourth. That the so-called manufacturers' license agreements and the jobbers' license agreements, and the price lists made part of said agreements, all described in the petition herein, have been and are the means adopted and used by the defendants in order to carry into effect the objects and purposes of said unlawful combination in restraint of said interstate trade and commerce in violation of said act of Congress, and that the said agreements and price lists are therefore hereby declared illegal and the defendants and all and each of them and their officers, agents, servants, and employees are enjoined and prohibited from doing anything in furtherance of said manufacturers' license agreements and jobbers' license agreements, and from enforcing in any manner said agreements or any of the terms thereof, and from adopting or enforcing said price lists in interstate commerce in sanitary enameled ironware.
>
> Fifth. That the defendants, their officers, agents, servants, and employees, are enjoined

> and prohibited from continuing their attempt to monopolize interstate commerce in said ware by means of the unlawful combination hereinbefore described, and more particularly by means of said manufacturers' license agreements and jobbers' license agreements, and said price lists, or by any other means similar thereto.

The decree also prohibits the defendants from engaging in any like combination, but declares that the decree shall—

> not be construed to prevent whoever may be the owner or owners of the Arrott patent and other dredger patents relating to the manufacture of sanitary enameled ironware from granting lawful licenses to any of the defendants or others to use such patents; or to prevent the defendants or others from taking lawful licenses to use any of such patents. (A, 126.)

ASSIGNMENTS OF ERROR.

(A, 129–134.)

The assignments repeat many times in varying phraseology that the court erred (*a*) in holding the manufacturers' and jobbers' license agreements and the price lists illegal and void and unauthorized by the patent laws; (*b*) in holding that the owner of patents can not legally under the patent laws fix the price and prescribe the terms under which the product of the use of the invention covered by the patent can be sold and resold; (*c*) in holding that the

defendants had combined and adopted the agreements and price list as the means to carry into effect their illegal combination, and not for the purpose of improving the conditions of the business and preventing the manufacture and sale of defective ware; (*d*) in not dismissing the petition as to the individual defendants; (*e*) in not granting the motion of defendants to postpone the cause until the criminal proceedings pending in Michigan, on account of the same transactions, had been finally disposed of.

CONCERNING THE FACTS DISCLOSED BY THE RECORD.

(a) Facts showing how the combination was formed.

The evidence in support of the Government's contentions is overwhelming. In this brief we shall attempt merely to outline the salient facts.

The plan, briefly described, included three parts: (1) A manufacturer's license agreement; (2) a jobber's license agreement; and (3) a price list which established the prices of the manufacturer to the jobber and the resale prices of the jobber to the retailer or plumber.

Every corporation defendant signed the uniform manufacturer's license agreement with Wayman. To that license agreement, and as parts of it, were annexed the jobber's license agreement and the price list. The manufacturer agreed with Wayman that he would sell ware only to jobbers who should sign the jobber's license agreement with the manufacturer. The jobber bound himself on his part to confine his

purchases of ware to the 16 manufacturers who had contracted with Wayman. Manufacturers and jobbers stipulated to observe the prices established in the price book on sales by the manufacturer to the jobber and on resales by the latter to the plumber.

The dredger patents were assigned to Wayman May 4 and 5, 1910, the contracts signed May 6, and the arrangement as to prices and all other terms of sales went into effect June 1. The petition was filed July 21, 1910.

The Government introduced much evidence to the effect that prior to the assignment of the three patents to Wayman the defendants, as the result of numerous meetings and conferences, had determined upon all the principal details of the manufacturers' license agreements, the jobbers' license agreements, and the price list. The object of this evidence was to establish an understanding between all the defendants, prior to the execution of the license agreements, as to what those agreements should contain, and to disprove the allegations of the answers that Wayman executed the agreements separately with each of the defendants without any previous cooperation between them.

To prove the effect of the combination in action—that is to say, the manner in which the arrangement devised by defendants operated upon and affected the commerce which it was designed to restrain—was the purpose in the introduction of a great part of the testimony. The enforcement of the unreasonable conditions embodied in the agreements; the control

of prices and elimination of all competition as to prices, first, between the manufacturers, and, secondly, between the jobbers; the efforts to force the independent manufacturers into the combination; the cutting off of supplies from jobbers who had not signed the uniform agreements; in fact, all the evidence which illustrates the power of and harm done by a great combination and monopoly in operation comes properly under this head.

Certain written statements and admissions were entered for all the defendants. (Exhibit 29, Record, II, 46–48.) These establish the organization of the corporation defendants, that the individual defendants are officers of the corporation defendants, that the factories for the manufacture of sanitary enameled ironware are located in 11 different States, all of which are named, and that "all the defendants have been and now are engaged in the manufacture of sanitary enameled ironware, such as bathtubs, washbowls, lavatories, drinking fountains, etc., at their respective factories."

The defendants not admitting in the answers that they are engaged in interstate commerce, the Government put in much testimony to show their manner of doing business and that the restraints complained of directly affect interstate commerce. (I, 55, et seq.; I, 211.) The Government introduced a bluebook entitled "List of Jobbers of Plumbing Supplies in the United States, July, 1910," containing the names of 389 jobbers scattered throughout the United States from Washington to Florida and from Maine to

California. Out of that number 340 executed license agreements with one or more of the corporation defendants. (I, 60–62; II, 49.) The manufacturers ship to these jobbers and the latter in turn reship the ware from their warehouses to their customers, retailers or plumbers. The jobbers are engaged in interstate commerce not only in buying but also in selling, for they reship to customers located in many States outside the place of business of the jobber. (Sullwold, I, 320; Bullock, I, 326; Gilmore, I, 330; Chandler, I, 341; Hirschfeld, I, 345; Harder, I, 365; Fleck, I, 372; Boardman, I, 381; Thorndyke, I, 388; Haff, I, 402; Davis, I, 411; Murray, I, 414; Grosswiller, I, 424; Collins, I, 531.) The unlawful agreements of defendants reached out to and restrained this commerce of the jobbers with their customers as well as the interstate commerce between the manufacturers and the jobbers.

The principal meetings had prior to the consummation of the combination with references to the record follow:

1. A meeting of the members of the Sanitary Enameled Ware Association at Pittsburgh, February 1, 1910. (Ex. 7, II, 12; I, 29–34, 37–38, 113, 226, 237, 245–248; IV, 233–235.)

2. A meeting of important manufacturers to consider the license plan called by Wayman, March 2, 1910, at Chicago. (Ex. 51, II, 105; I, 12–18, 94–95, 178, 180, 247, 248.)

3. A two days' convention of manufacturers of enameled ware at the Hotel Astor, New York City,

March 29 and 30. (Exs. 2 and 4, II, 2–3, 7; I, 9–11, 15–22, 26, 35–36, 43–45, 67–74, 98–109, 227–229, 237–239.)

4. Sessions of the price and schedule committee elected at the New York March meeting, held at the Colonial Hotel, Mount Clemens, Mich., April 8 to 14; at Pittsburgh, April 19; and at New York City, April 21. (Exs. 31–40, II, 62–73; Ex. 60, II, 112; I, 28, 45–48, 67–70, 75–84, 107–109, 150, etc.)

5. A meeting of all the manufacturers at the office of Noble, Jackson & Hubbard, attorneys, New York City, May 6, called for the purpose of signing the license agreements with Wayman. (Exs. 8–11, II, 13–40; Exs. 13–28, II, 42; I, 41–46, 66, 69, 111, 113, 186, 254.)

During the period covered by these meetings and prior thereto, Wayman carried on an extensive correspondence with the defendants, sending or taking in person to each of them the drafts of the proposed license agreement as these were revised from time to time. (I, 185–186.)

The minutes of the Sanitary Enameled Ware Association for February 1, 1910, named the persons present on that day. (II, 12.) Wayman had with him a rough outline of the contemplated licensing arrangement and asked an expression of opinion as to whether those present were in favor of the proposed arrangement. The majority said they approved the plan. (I, 31.)

A few days after that meeting, on February 7, Wayman wrote to each of the manufacturers "refer-

ring to the informal discussion that took place after the regular meeting regarding resale prices and license arrangement," and inquiring if he had any patents which he would be willing to assign. (I, 37–39.) Attached to that letter was a schedule of the "preferential selling discounts to jobbers asked for by the various manufacturers," and a list of the different provisions which the proposed license agreements were to include. (Ex. 141, II, 210–213; I, 245, 247; I, 37–39, 153–154.)

Wayman called the meeting of March 2 at Chicago for the purpose of discussing the license proposition. (I, 12.) That evening, after the meeting, Wayman drew up a rough outline of the contemplated arrangement, entitled "Memorandum of Agreement" (Ex. 3, II, 4), which he took around to some of the manufacturers for their signatures, and of which he sent copies to others. (I, 11, 25, 28, 35, 150, 181.) This memorandum was a tentative draft containing in rough form the provisions which were to be embodied in the final agreement in a more definite form. A reference to it, therefore, indicates the unlawful subjects which the defendants were discussing two months before they signed the final papers. Some of the significant paragraphs of the memorandum of agreement of March 2 follow. These refer to two schedules of prices—manufacturer to the jobber and resale by the latter to the plumber—provide for penalties upon manufacturer and jobber, etc. (II, 4.)

> 3. For each violation of the price regulations of the license agreement we agree to for-

feit a sum equal to the amount of the shipment in question, and such other penalties as may be agreed on.

4. The selling prices to the jobbers to be established through the licensor by a price committee appointed by the various manufacturers.

5. The resale prices to the jobber, taking into consideration the rebate for observance of buying and selling regulations, shall be figured as follows:

"High-grade goods, 25 per cent above jobbers' cost.

"Competition goods, $16\frac{2}{3}$ per cent above jobbers' cost."

6. The rebates to jobbers shall be as follows:

Ten per cent payable at end of period for strict observance of agreements, the details of the manner in which the rebates shall be made to be determined.

* * * * *

9. The details of contract forms between the manufacturers and the licensor shall be drawn up by the licensor and submitted for approval at the next special meeting to be held in New York City.

10. The licensor will also submit the same, covering agreement between manufacturers and jobbers.

11. The following "preferential discounts" from the selling prices established by the licensor will be allowed the various manufacturers on sales to jobbers only. * * *

It should be noted that *the above exhibit does not contain a single word relative to elimination of seconds.*

The "next special meeting" (par. 9, supra) came on March 29 and 30, at the Hotel Astor, New York City. Before that meeting Wayman sent to each manufacturer a "Sample copy of proposed form of license agreement" and a "Sample copy of proposed form of jobbers' agreement." These draft agreements, which closely resembled the final agreements which were adopted five weeks later, were gone over in detail at that meeting in New York. They were introduced in evidence by the Government (Exs. 8 and 10, II, 13 and 27), together with two resolutions adopted at the New York meeting (Exs. 2 and 4, II, 2 and 7). One resolution adopted at the New York meeting reads as follows:

MARCH 30, 1910.

Resolved, That the matter of license agreement and resale agreement be referred to a special committee of five (5); said committee to be elected at this meeting and to be known as the Price and Schedule Committee, which committee shall be elected directly should the motion to adopt this resolution prevail.

This committee shall interview the various manufacturers, obtaining their consent as evidenced by their signatures to the above-mentioned agreements. And when the consent of 85 per cent of the production is had, the agreements shall become binding and effective.

The commissioner is authorized to levy a special assessment, equal to the amount of one quarter's dues as now paid into the association, the proceeds of said special assess-

ment to be used for the purpose of defraying the necessary expenses incurred in carrying into effect the object for which this convention was called.

The undersigned agree to the above conditions, and in so appending their signatures hereby agree to give their prompt cooperation to the matter in question.

Thirteen companies signed the resolution above quoted. (II, 2.)

The price and schedule committee elected at New York in March consisted of Francis J. Torrance, first vice president of the Standard Sanitary Manufacturing Co.; Hermann M. Hoelscher, secretary of the L. Wolff Manufacturing Co.; A. H. Cline, secretary of the United States Sanitary Manufacturing Co.; T. R. Barnes, secretary of the Barnes Manufacturing Co.; and Howard T. Gates, secretary of the McCrum-Howell Co. The same men were elected May 6 to constitute the price commission provided for by the license agreement as finally adopted on that day. (I, 45–46.)

The price and schedule committee held a week's session at Mount Clemens, Mich., April 8–14. At the conclusion of the meeting Wayman, who had attended all the sessions, informed the other manufacturers by letter of the satisfactory results reached at Mount Clemens, stating "all the details of the license agreement and jobbers' agreement were thoroughly gone into and considered, every paragraph being carefully weighed; the committee making such

additions or eliminations as they considered advisable." (Ex. 31, II, 62.) He also notified them that a general meeting would be called at New York City during the first week in May for the purpose of executing the final license agreement papers which would "put this and the resale proposition into effect on June 1." On May 6 the manufacturers came together for that purpose. Two days before the Arrott patent had been assigned to Wayman for two years, and on the 5th the Dithridge and Lindsay patents were assigned to him. (Exs. 5, 6, 67, 70; II, 8–10, 117–124.)

Thirteen manufacturers attended the meeting of May 6 in New York City (I, 41–46, 52, 69, 111–113, 157, 186); called up in alphabetical order they signed the agreements which went into effect June 1, 1910 (I, 42). Three other manufacturers concluded similar contracts with Wayman during May and July. (II, 42.)

Judge Rose said (A, 104):

> No defendant entered into the agreement without knowing that at least thirteen of the other corporate defendants had executed it or intended so to do. Without this knowledge no one of them would have become a party to it.

And on page 105 of Volume A he said:

> The principles upon which these resale prices were to be worked out in detail had been agreed upon between Wayman and a committee chosen by nearly all of the corporate

defendants. This agreement was reached before any licenses were accepted and before any of the patents had become Wayman's.

The manner in which the defendants accomplished the assignments of the patents deserves special consideration. Wayman had no money and no credit. On May 2, W. A. Myler, secretary and treasurer of the Standard Sanitary Manufacturing Company, loaned Wayman 100 shares of Standard Sanitary stock, upon which he borrowed from a bank in Detroit $7,000, opening an account there. Wayman, on May 4 and 5, drew three checks upon that account for $5,000, $350, and $500 in favor of the Standard, Mott, and Wolff Companies, respectively, to pay for the three assignments. (I, 128–138.) Upon this expenditure of $5,850 Wayman bases his claim of right to control an output of enameled ware estimated to aggregate annually $14,000,000. (I, 5, 49, 50.)

The Standard Co. in reality paid Wayman to relieve them of the Arrott patent. Under the terms of the license agreement they were to pay him a net royalty of $1 a day per furnace operated. On 89 furnaces, their entire capacity, he was entitled to receive approximately $25,000 a year net royalty. Exhibit 132 (II, opposite p. 188) shows that they in fact paid him during the months of June, July, and August, 1910, at the rate of $20,000 a year, and that his total net royalty from all the companies was at the rate of $40,000 a year during those months.

Prior to May 4 Wayman had paid nothing. (I, 128, 188.) However, with the other defendants he sets up in his answer certain so-called "options" to buy the patents which it is asserted he had obtained in December and January from the three corporations. But he had given no consideration for those options—the amount that he was to pay, the length of the period for which he was to take the assignment, whether there should be an assignment of all interest in the patent for a period undetermined or merely the transfer of an exclusive license to use the patent—these and all other terms remained undetermined until months afterwards. There was not the semblance of a legal enforceable option. (I, 128–138, 187, 188; IV, 235, 239.)

It is manifest that the term "option" was invented by the defendants after this suit was brought, their purpose being to give to Wayman the appearance of having an interest in the patents during the months in which he was promoting the combination; in other words, to make Wayman appear to be a bona fide owner of the patents. See the examination of defendant Dawes on this subject by defendants' counsel. (III, 478–479.) It may be that early in the year the Standard, Wolff, and Mott companies had expressed a willingness to assign the patents, but to what was at most an approval of the proposed scheme counsel for defendants have applied the formal legal phrase of the granting of an option. (I, 188.)

(b) Facts showing how the combination worked.

On June 1 the licensing arrangement became operative; thereafter the various defendants carried on interstate commerce in sanitary enameled ironware, subject to its provisions.

The several agreements between the manufacturers and Wayman were introduced in evidence, but only one is printed in the volume of exhibits, as they are all alike. (Ex. 9, II, 20; see also Exhibits 13–28, II, 42–45.) A copy of the jobbers' license agreement is Exhibit 11. (II, 32.) The price list, a book an inch thick, adopted by the defendants, appears in part in the record as Exhibit 41. (II, 74–92.) This price book establishes prices on sales by the manufacturer to the jobber and on resales by the jobber to the plumber. It gives the delivered prices at all jobbing points in every State and equalizing rates to 4,000 towns. (II, 95.)

The licensing arrangement evidenced by the exhibits enumerated in the last paragraph restrains trade in the following respects, among others:

1. Each of the 16 manufacturers agrees to sell to jobbers at the prices fixed in the price list, thereby eliminating all competition between them as to prices. Certain of the smaller manufacturers are allowed special differentials or preferential discounts, which enable them to sell some articles at lower prices than the larger manufacturers, but these differentials they may not vary, and they were fixed by agreement of all the defendants. (II, 22.)

2. The license agreement provides for a price commission of six, "five of whom shall be designated by a majority of the parties holding licenses similar to this license." The sixth member is Wayman. This commission has control over prices, preferential discount, and conditions of sale. (II, 23; I, 66.)

For membership of the commission, see supra, pp. 24.

3. The manufacturer's license agreement forbids any manufacturer selling to any jobber who has not signed the uniform jobber's license agreement.

4. The jobber's license agreement requires every jobber to resell at the prices fixed in the price list. (Ex. 11, II, 36.) This eliminates all competition between jobbers as to prices. The price list divides the country into 11 territories or zones. Every jobber selling outside the zone in which he is located must observe the prices established for that zone.

5. Jobbers are forbidden to "purchase, sell, advertise, solicit orders for, or in any way handle or deal in sanitary enameled ironware of any manufacturer not licensed under the letters patent enumerated herein." The penalty imposed on the jobber for breach of this condition is cancellation of the agreement and forfeiture of all rebates; thereafter the jobber can not obtain sanitary enameled ironware from any of the 16 manufacturers at any price. (Ex. 11, II, 37, par. 10.)

6. Penalties were imposed upon manufacturers and jobbers alike for breach of any of the conditions of

the contracts. This was effected in the case of the manufacturer by the manufacturer paying to Wayman more than the royalty the latter was entitled to retain provided the manufacturer had observed the license agreement. The nominal royalty was $5 a day per furnace, but at the end of the fourth month 80 per cent of this, or $4 a day per furnace, for the first month was to be refunded if the manufacturer had not broken the contract. As there are 25 working-days to the month and 4 months pass before any repayment, Wayman held at all times subject to forfeiture $300 on each furnace. There are 195 furnaces. Therefore, when all had been running, Wayman after the end of the third month held at all times nearly $60,000 of the manufacturers' money, paid ostensibly as a royalty, but, in fact, as bail to secure the performance of the unlawful provisions of the contract. (Ex. 9, II, 21, 24; Ex. 132, II, opposite p. 188; see also opinion of Judge Rose, A, 104.)

The cash security in the case of the jobber was obtained by a system of rebates payable at the end of the calendar year by the manufacturer to the jobber, provided the latter had observed the terms of the agreement. Judge Rose finds that under the arrangement the corporate defendants would hold toward the close of every calendar year in the neighborhood of half a million of the jobbers' money. (See opinion of Judge Rose, A, 106; also II, 34–36.)

7. The price list, a book an inch thick, fixes the prices throughout the United States from manufac-

turer to jobber and jobber to plumber. Some pages of this exhibit were printed. (Ex. 41, II, 74–92.) It divides the United States into 11 zones, naming the jobbing points in each zone. On page 92 of Volume II will be found a typical page of this price list, illustrating the method adopted for ascertaining the price of a bathtub on two sales, first, from the manufacturer to the jobber, and, second, from the jobber to the plumber. The table of figures and discounts printed on that page govern the sales of all tubs of the type indicated at the top of the page. (See also I, 86, and Ex. 133, I, pp. 210 et seq.)

The price list purports to be the property of Wayman. Page 2 reads as follows (II, 76):

> JUNE 1st, 1910.
>
> *To licensed jobbers' salesmen:*
>
> This price list is the property of E. L. Wayman, Arrott Building, Pittsburgh, and is loaned to you with the understanding that it is subject to recall at any time. The prices given herein are the selling prices I have established to plumbers on sanitary enameled ironware manufactured by the following companies operating under patents owned by me and to whom I have granted licenses:
>
> (Enumerating 16 licensed manufacturers.)
>
> It is necessary for all licensed manufacturers to sell their product manufactured in accordance with these patents on the terms herein established, and you are hereby notified that the license agreements executed by your company obligates it to resell the various licensed

products at no better prices, terms, or other regulations than herein established. As changes, additions, or eliminations occur, new sheets will be issued promptly.

E. L. WAYMAN.
ARROTT BUILDING, *Pittsburgh, Pa.*

Oscar A. Kroos, secretary of the J. M. Kohler Sons Company, independent manufacturers, prepared a tabulation based upon the price list, showing the increases in prices which his company would have received had it entered the combination. These increases ranged from 1 to 45 per cent. (I, 464.) See that portion of the opinion of Judge Rose which relates to prices. (A, 109–112.) On page 111 he states "The record shows that the agreements were intended to raise prices and that they did so."

(c) Extent of control obtained by the combination.

Only two manufacturers of any consequence, the J. M. Kohler Sons Company, of Sheboygan, Wis., and the Iron City Sanitary Manufacturing Company, of Pittsburgh, Pa., refused to enter the combination. Several smaller manufacturers did not join—the Blairsville Enameled Ware Company, of Blairsville, Pa.; the Washington Iron Works, of Los Angeles, Cal.; Louis Lipp, of Cincinnati, Ohio; and the Rundell Manufacturing Company, of Milwaukee. (Kohler, I, 243–244.)

The manufacturers who formed the combination controlled more than 80 per cent of the business. (Wayman, I, 69.) President Ahrens, of the Stand-

ard Sanitary Manufacturing Company, wrote Mr. Kohler, May 7, 1910, the day after the New York meeting, "The Iron City concern and yourselves are the only people of importance who have not signed." (II, 232.) Mr. Kohler and Mr. Kelly, the latter secretary of the Iron City Company, each testified to repeated and persistent efforts on the part of defendants to bring his company into the combination.

Wayman telegraphed Kohler from New York during the meeting of March 29 that 91 per cent of the production "was favorable to the plan." (II, 109.) Of those present at that meeting only two insignificant companies, Blairsville and Clymer, stayed out. Neither Kohler nor the Iron City Company had ever looked upon the proposition favorably.

Each of the 11 jobbers summoned by the defendants testified on cross-examination by counsel for the Government that a very large proportion of his purchases was from the defendants, ranging from 80 to 95 per cent in the case of the different witnesses. (Clow, IV, 28; Hartnett, IV, 40; Pierce, IV, 47; Felix, IV, 56; Ivy, IV, 61; Stringer, IV, 74; Zander, IV, 78; Hunting 84; Sisk, IV, 89; Callow, IV, 94.)

An even larger per centage of jobbers signed the contracts. President Ahrens, of the Standard, writing July 11, 1910, to Mr. Sullwold, president of the Western Supply Company, a jobber who refused to sign the license agreement, said (I, 291):

> On the day I left Chicago we had secured signatures from 333 jobbers out of a total of less than 370, giving us fully 90 per cent of

> the jobbers and more than 90 per cent of the purchasing power. (See also I, 312 to 314, 321, and 324.)

On July 18 Ahrens wrote to the same person (I, 296):

> Within 30 days after the jobbers' contracts were sent out 90 per cent of the legitimate jobbers of the United States had signed and returned them.

Vice President Torrance, of the Standard, wrote to Mr. Sullwold June 16 (I, 303), referring to the jobbers who had registered with the Standard:

> The names cover from the Atlantic to the Pacific; with the exception of one customer in New England, all the trade there have signed up.

The Government introduced a bluebook recognized in the trade as the list of all the principal jobbers of sanitary enameled ironware in the United States. This list is printed as Exhibit 30. (II, 49 to 61.) The jobbers who signed the agreement are all checked in that list; to them must be added the jobbers who are not in the bluebook, but whose names appear at the end of the exhibit. (I, 60–61.)

Of the 389 jobbers listed in the bluebook, 340 signed jobbers' license agreements with the defendants, and 48 smaller jobbers, not so listed, also signed. (I, 60–63, 89, 223, 232, 263, 388.)

(d) Acts illustrating the oppressive character of the combination.

June 1 the corporation defendants distributed the forms of the jobbers' license contracts among their customers and with each contract sent a letter containing this sentence:

> It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware.

Some of these letters are printed in the Volume of Exhibits. (II, 101, 102, 281–287.)

Each jobber's contract had printed at the top the following:

> NOTE.—This contract must be executed by the purchaser in order to purchase licensed sanitary enameled ironware. (II, 32.)

The Government summoned a large number of jobbers from different parts of the country to prove the enforcement of this provision of the contract. As pointed out above (supra, p. 19), each of these jobbers does an interstate business in selling as well as in buying. In each case the testimony of the jobber was supplemented by letters from one or more of the defendants, illustrating the methods and the effect of the combination upon the independent jobbers and the manufacturers. The details of this testimony, of course, must be omitted in this brief. A list of some of the jobbers who gave testimony of the character indicated, with reference to the record, follows:

Fred H. Boardman, secretary and general manager of Ronalds & Johnson, jobbers at Brooklyn, New

York City, and Camden, N. J., selling and shipping to customers in New York, New Jersey, Pennsylvania, and other States. (I, 381.) Prior to June 1 this company bought from the Standard, Weiskittel, Barnes, Cahill, Day Ward, Kerner, McVay & Walker, McCrum Howell, United States, and L. Wolff Companies. Each of these 10 companies joined the combination. He produced the jobbers' contracts received early in June from each of the manufacturers, with a letter accompanying each contract stating: "It is necessary for you to execute these contracts before we can sell you licensed sanitary enameled ware." (I, 382.)

Ronalds & Johnson refused to sign the agreements. At the time the witness testified (Nov. 23, 1910, I, 344, 381) his company was unable to obtain the ware of any of these companies except through other jobbers, its competitors, at resale or plumbers' prices. (I,384.) (For correspondence see II, 344.)

Henry E. Bullock, president of the Illinois Malleable Iron Co., jobbers at Chicago, selling and shipping to customers in Indiana, Michigan, Illinois, Iowa, and Wisconsin. (I, 325 et seq.) He refused to sign the agreements. Thereafter he was unable to buy the ware of the licensed manufacturers except from other jobbers at resale prices, and he had difficulty in buying even in this manner. (I, 329.) The Kohler and Iron City Companies, independents, do not make all patterns, and therefore Mr. Bullock's company was obliged to cancel orders. (I, 328.) This witness produced letters from the Standard, United

States, and National Sanitary Companies declining to make shipments because the agreements had not been signed. (II, 301–308.)

Charles H. Chandler, of the Chandler Co., Cedar Rapids, Iowa, selling and shipping to customers in Iowa, South Dakota, Minnesota, Wisconsin, Kansas, and Missouri. (I, 341 et seq.). Before June 1 this company bought practically all their ware from the United States Sanitary Manufacturing Co. The latter company declined to sell ware after the Chandler Co. had refused to sign the contract. (I, 342.) (For correspondence produced by this witness see II, 325–328.)

Frank Collins, vice president National Supply Co., jobbers at Toledo, Ohio, selling and shipping to customers in Ohio, Indiana, and Michigan. (I, 530–573.) Prior to June 1 he did business with the United States, Standard, Humphryes, and National Sanitary Companies, principally with the United States. He received the contracts and accompanying letters, but did not sign any of the contracts. (I, 532.) For some time after June 1 the companies refused his orders (I, 541), but later Mr. Collins offered as an inducement to Mr. Torrance, vice president of the Standard, to confine his purchases to the Standard Co. if it would sell to him, although before June 1 Mr. Collins had been buying practically entirely from the United States Co. The Standard agreed to sell him on these terms. (I, 542, 544, 545, 566.) A letter from Theodore Ahrens, president of the Standard Co., to Mr. Collins was

introduced in evidence, with the following footnote in Mr. Ahrens's handwriting (I, 545):

> You can readily understand that we don't want you to buy elsewhere unless, as in this instance, there is a good reason for it. It would not be good policy to cut out United States altogether. Better give them some and keep them from kicking.

Edward T. Davis, of New England Plumbing Supply Co., jobbers, at Boston, selling and shipping to customers throughout New England. (I, 411.) This witness at the time he testified (Nov. 23, 1910) was unable to obtain the ware of any of the defendants except from other jobbers at plumbers' prices. He received the usual license agreements and accompanying letters, but refused to sign the contracts.

John G. Fleck, of Fleck Bros. Co., jobbers at Philadelphia, selling and shipping principally to customers in the State of Pennsylvania, but also generally throughout the country. (I, 372, 378.) This company received the usual contracts and accompanying letters, but (I, 374) refused to sign the contracts. Prior to June 1 practically all of its business had been with the Standard, United States, and Cahill Companies. After June 1 it obtained their ware from other jobbers at resale prices. (I, 380.) (For correspondence see II, 342–343.)

James K. Gilmore, president D. M. Gilmore Co., jobbers at Minneapolis, Minn., selling and shipping enameled ware to customers located in Minnesota, North and South Dakota, Wisconsin, Iowa, and Mon-

tana. (I, 330 et seq.) This witness received the contracts about June 1 from the different companies with the accompanying letters. (I, 337–339.) Thereafter his trouble began. Manufacturers whose goods he had been handling refused to sell to him. (I, 332.) Everybody he attempted to buy goods from wanted him to sign the agreement. He was able to buy licensed goods from other jobbers, but only at resale prices. (I, 339.) The witness produced correspondence substantiating his statements. (II, 309–324.)

Joseph F. Grosswiller, president of Joseph F. Grosswiller Supply Co., Toledo, Ohio, selling and shipping to customers in Ohio, Michigan, and Indiana. Prior to June he did business with the L. Wolff, Cahill, Standard, and Iron City Companies. (I, 423–448.) He received the usual contracts, which he refused to sign. (I, 425.) The witness produced letters proving refusals to fill orders after June 1 by the Standard, Cahill, and L. Wolff Companies. Some of these orders were for ware specified by the architect and could not be filled through another manufacturer. These letters appear in I, 426, 427, 428, 430, 432, 435, 437, 438, 439, 440, 442.

Erastus E. Haff, of F. N. Du Bois Co., jobbers at New York, selling and shipping to customers in New England and the Middle States. (I, 402–409.) Before June 1 he did business with the Standard, Weiskittel, Cahill, Day-Ward, Kerner, and McCrum Howell Companies. (I, 402.) At the time he testified (Nov. 23, 1910) he was unable to obtain ware of these manufacturers except through other jobbers

at plumbers' prices. The witness produced the usual contracts, with accompanying letters. (I, 406.) (See other correspondence, II, 354–358.)

Victor A. Harder and *Victor A. Harder, jr.*, officers of Mayor, Lane & Co., jobbers, 50 years in business at New York, selling and shipping to customers in New York, New Jersey, Connecticut, Massachusetts, Pennsylvania. They produced the usual contracts and accompanying letters. (I, 364–372.) They did not sign the license agreements, and after that they were unable to buy the goods of any of the licensed companies. (I, 371.) (For correspondence see II, 337 and 341.)

Charles S. Hirschfeld, half owner of Central Plumbers' Supply Co., jobbers at New York, selling and and shipping to customers in New York, New Jersey, Connecticut, Massachusetts, and Vermont. Prior to June 1 the company did business with the Standard, United States, Barnes, Humphryes, Cahill, and Weiskittel companies. (I, 344 et seq.) The witness received the usual contracts with accompanying letters on the morning of June 6. (I, 349–350.) Thereafter he was unable to obtain the goods of the licensed manufacturers. He testified (I, 362) that he tried to purchase and was refused and was unable to obtain at the time of his testimony the ware of the Standard, United States, Cahill, Humphryes, and Barnes companies. (I, 362.) This witness also produced correspondence. (II, 329–336.) In declining one order defendant Standard Co. wrote, July 14:

> In reference to releasing this material and making shipment, regret to advise that *we can not do so, although this material is at present prepared for shipment*, but we have instructions not to make any shipment until in receipt of your signature to the resale agreement which was forwarded you some time ago. Upon receipt of your signature we will make immediate shipment. (II, 330.)

Edward W. Hotchkiss, president Hotchkiss, Vail & Garrison Co., jobbers at New York. (I, 392 and 402.) This witness refused to sign the contracts and had the usual trouble. He finally signed in August. He produced many letters. (II, 345–353.) (See also letters produced by Wayman relating to the same matter, II, 179–183.)

John A. Murray, of the John A. Murray Co., jobbers at New York, selling and shipping to customers in New York, Connecticut, New Jersey, and Pennsylvania. Prior to June 1 he did business with the Standard, Cahill, Humphryes, and United States companies. At the time he testified was unable to get the goods of any of these manufacturers, as he had refused to sign the contract. (I, 416.)

John L. Sullwold, president Western Supply Co., jobbers at St. Paul, Minn., selling and shipping to customers in the States of Minnesota, Wisconsin, Iowa, North and South Dakota, Montana. (I, 289–325.) On June 7th, after receiving the jobber's contracts, Mr. Sullwold wrote Wayman asking for permission to continue to sell the ware of Kohler, the independent

manufacturer. (I, 317.) Wayman refused permission (I, 318) and Sullwold then declined to sign the contract. Thereafter he could not obtain the ware of the licensed manufacturers except from other jobbers, his competitors. (I, 322.) The Government introduced in evidence through another witness a letter proving that Wayman allowed the licensed jobbers in Sullwold's territory to quote from 10 to 12½ per cent below the resale prices. (II, 317.) This concentrated the power of the combination against Sullwold. The witness produced voluminous correspondence between himself and Ahrens and Torrance, officers of the Standard Co., and Wayman, which will be found in the record. (II, 258–300.) (See also I, 291–320.)

Herbert W. Thorndike, treasurer F. W. Webb Manufacturing Company, jobbers at Boston, selling and shipping to customers in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York. (I, 388.) This witness produced the usual contracts and accompanying letters. He refused to execute the license agreement. Prior to June 1 he did business with the Standard, Kerner, and United States companies. After that date he was unable to buy the goods of those manufacturers except from other jobbers at resale prices.

In view of the testimony of these fifteen jobbers it is not surprising that Judge Rose said in his opinion, "May, 1910, must have been a trying time for jobbers with a stubborn liking for independence and a

taste for managing their own business in their own way." (A, 107.)

The following letter illustrates the arbitrary methods of the defendants (II, 299):

JUNE 10, 1910.

The WESTERN SUPPLY CO.,
St. Paul, Minn.

GENTLEMEN: Replying to your letter of the 7th, it is impossible for me to give you permission to continue buying goods from the J. M. Kohler Sons Co., Sheboygan, Wis. This company has been invited to execute a license agreement and use the patented process, but has not seen fit to do so. I would like to have them execute an agreement, but if they will not it is impossible to concede to any of their customers the right to purchase their goods if the customers desire to purchase licensed ware.

I hope that you will take the matter up with them and try and convince them that they should manufacture goods in accordance with the other companies.

Yours, very truly,
E. L. WAYMAN, *Licensor.*

This telegram is also a fair sample (II, 158):

JUNE 17, 1910.

ATLAS SUPPLY CO.,
Muskogee, Okla.:

If you will sign license agreement, will authorize you to handle Kohler ware subject to resale terms for a reasonable length of time, with understanding that you will at once decrease your purchases and stock licensed ware

and further sale of it and furnish me monthly statement of purchases from Kohler. Licensed manufacturers desire to give all assistance possible to jobbers in order that they may make a fair margin of profit and do not desire to inflict any hardships, but do believe they merit the support of all jobbers in this proposition. Southwest, Kansas City Pump, Young & Crane are supporting licensed manufacturers. Reeves wires he has put resale into effect and intends to sign. Expect U. S. Water will sign to-day. Wire answer.

E. L. WAYMAN.

The following letter written by an agent of one of the appellants is also illustrative of their methods (I, 334–336):

CHICAGO, *August 26, 1910.*

D. M. GILMORE CO.,

Minneapolis, Minn.

GENTLEMEN: * * * As I wired you from Kansas City, I received a telegram from the home office notifying me that you had asked them to ship some tubs and that it was absolutely necessary for you to sign the enameled-ware contract before they could do so. In my telegram to you I advised your signing it at once.

Upon my return to the office I found a letter from our secretary in which he states that Mr. Wayman was sending a letter to the jobbers in your territory *who had signed up their contracts.* He has stated to them that they are at liberty to quote from 10 to 12½ per cent below the resale price in the district

effected by the Western Plumbing Supply Co. You can see from this that it is Mr. Wayman's intention to protect the jobbers who have *signed the agreement* against the cut prices being made by certain jobbers who are not cooperating in the resale price. * * *

Yours, very truly,

S. O. DUGGER.

P. S.—I want you to treat this letter as strictly confidential for I am not sure whether or not I am at liberty to give you this information.

The vice president of the Standard Manufacturing Company wrote this letter (II, 351):

PITTSBURG, U. S. A.,
June 27, 1910.

HOTCHKISS, VAIL & GARRISON,
New York City, N. Y.

GENTLEMEN: Answering your letter per E. W. H. of June 24th, would say that we have not entered orders dated subsequent to June 4th from any concern who has not entered into the resale agreement.

Our license from the owner of the patents and under which we act arbitrarily fixes what we should do in this matter.

I sincerely hope, for our mutual good, that you will see your way clear to sign the agreement as some two hundred fifty (250) other reputable jobbers in the United States have already signed.

Yours, very truly,

FRANCIS J. TORRANCE,
Vice President.

(e) The unlawful purpose of defendants.

The facts overwhelmingly establish the charge of the Government that the defendants, knowing full well that the combination was unlawful, tried "to conceal their true purposes and the real character of the combination by the adoption of a plan intended by them to give to their acts a lawful aspect and to the combination a legal form." (Petition, A, 8.)

The loan of the Standard stock to Wayman by an officer of that company; the assignment for $5,000 cash and an unsecured note of a patent which had cost the Standard $35,000; the provision for reassignment at the end of two years (II, 8); the agreement of the Standard to pay net royalties aggregating $25,000 a year for the patent which it practically paid Wayman to take; the knowledge of the defendants that an out-and-out price agreement is unlawful; the deliberate framing of the contracts ingeniously worded so as to give the impression that the arrangement related to patented articles; all these facts convincingly establish the intent of the defendants to violate the rule of public policy established by the Sherman Act (I, 128–138).

Pointing to the same conclusion were the numerous meetings of defendants, at which the license arrangement "was discussed in school and out of school, when the meeting was adjourned and before it was called; it was always discussed not as a license agreement, but something to better business conditions." (Kelly, I, 225.)

President Ahrens, of the Standard Company, wrote to Mr. Kohler, who refused to join the combination, May 7, 1910 (Kohler, I, 255):

> It is not possible to carry through a resale price without a strong organization among the manufacturers and without some manner of controlling prices.

The defendants made repeated and persistent but ineffectual efforts to bring the Kohler Company into the combination, for the latter denounced the arrangement as a plain attempt to overreach the Sherman law. (II, 107, 113.) Directly after the meeting of May 6, at which the contracts were signed and which Mr. Kohler had refused to attend, President Ahrens of the Standard Company wrote to him expressing his disappointment and asking for a meeting. This was had Friday, May 13, at Mr. Kohler's Chicago office. John Clifford, vice president of the L. Wolff Company, Francis J. Torrance, vice president of the Standard Company, and Mr. John B. Murphy, vice president of J. M. Kohler Sons Co., were also present. (Kohler, I, 253.) Mr. Kohler testified that Ahrens did most of the talking at the conference, and continued (I, 256):

> Q. What did you say?
>
> A. I put the question to them—I put the question to them, "You will admit that this equipment covered by the Arrott patent is not necessary in the manufacture of enameled ware." To which they practically assented. I then said, "Then its purpose is purely for the

> purpose of entering into an arbitrary price agreement?" Mr. Torrance said, "If you put it that way." I then said, "The patent in that case is purely a subterfuge, and this plan would be contrary to the laws of Wisconsin, which are very strict on that, and also the Sherman antitrust law, and we will not go in it." Mr. Clifford was impressed with the word "subterfuge." He said that was a very good word. *He also made the statement that the Government could do nothing more than break up the show.*

The counsel for the defendants did not cross-examine the witness upon this testimony nor call any of the other persons present at the meeting to contradict it.

Vice President Torrance, of the Standard Company, wrote on June 16, 1910, to Mr. Sullwold, a jobber who refused to sign, saying (I, 302):

> The resale agreement is the only legal remedy that can or may be applied to better conditions as they exist in the larger majority of jobbing centers.

Defendants were repeatedly warned that the arrangement was unlawful. Mr. Frank Collins, a prominent jobber of Toledo, Ohio, testified respecting a meeting of manufacturers and jobbers held in Toledo in June, at which defendants Ahrens, Torrance, Cline and others were present and made speeches urging the jobbers to join. His testimony is interesting (I, 534):

> I told them that in my opinion the entire proposition was illegal. They based their

claim for legality on the fact that they had had the advice of a bunch of attorneys whom, in their opinion, they considered the most qualified to give an opinion on this subject in the United States; that the said attorneys had many other schemes of this kind now in operation and that they were found to be legal, or at least had not been attacked by the Government. * * *

I told them in my opinion they should not accept any small firm's advice on a subject of so much import, that we had had a similar case in Toledo, and our icemen went to jail on the advice of their attorneys, and our brick and lumber men were all heavily fined, and that I had made up my mind, expert counsel to the contrary notwithstanding, that if they went into this thing they would all wind up in jail, and that I would not have anything to do with it, and strongly urged them not to go into it. (I, 535, folio 2.) (See also I, 74, 97, 110, 225, 256.)

Circular letters sent by Wayman, as commissioner of the Sanitary Enameled Ware Association, to the various manufacturers from December to April, 1910, prove that just before the licensing arrangement was entered into the manufacturers had been engaged in sharp competition. (IV, 231, fol. 3; Exs. 287–292, IV, 224–233.) One of the inducements which Wayman held out to them when he asked them to enter into the license agreements was that it would enable the companies to escape that competition. (IV, 232, fol. 2.)

Defendant J. T. Duryea wrote Wayman March 15, 1910, referring to the memorandum of agreement which Wayman had sent to him (supra, p. 21): "In the abstract it looks good to me providing all manufacturers sign up" — and in the same letter he said, "Of course we will be greatly influenced by what the other manufacturers do." (II, 131.)

The Day-Ward Co., one of the corporation defendants, wrote Wayman January 11, 1910, referring to the proposed agreement of licensed manufacturers, saying, "We would not care to have anything to do with it unless all the manufacturers of enameled ware were parties to the agreement." (II, 132.)

Judge Rose said of the agreements: "They destroyed competition. They fixed prices. For that purpose they were made. They had no other." (A, 112.)

Respecting the utility of the patented dredgers, the evidence sustains the allegations of the petition that "these patents and the tools they cover, while useful and valuable in the manufacture of sanitary enameled ironware, are not essential thereto." (A, 9.)

According to our view it makes no difference whether or not good sanitary enameled ironware can be made without the use of the patented dredger, for the dominion of the patentee does not include a control over commerce in an article in the making of which the patented tool is used. (Infra, p. 68.)

Even a bona fide owner of a patented tool or machine has no authority by virtue of his patent to regulate the prices and terms of sale of the article which results, in whole or in part, from the use of the patented tool or machine. In legal theory no distinction can be made because of differences of degree in the utility of patented tools. Therefore, whether the Arrott dredger is an essential or only a useful tool is an immaterial question in this case. The evidence introduced, however, on this point conclusively establishes that the dredger is merely a handy tool.

Judge Rose said:

> All that can be safely said is that the automatic dredgers are useful tools. (A, 117.)
>
> It follows that there is no respect in which every tub, in the enameling of which an automatic dredger has been used, differs from every tub in the enameling of which the hand dredger has been employed. Whether the ware shall be well or ill made, whether it shall be durable or the reverse, whether it shall be sightly or unsightly, depends upon many circumstances of which the kind of dredger used to sprinkle the powder is only one, and probably not the most important.
>
> * * * * *
>
> Defendants say that while it is true that the automatic dredger is a mere tool, used in only one operation of a number required for the making of the ware, and while it is conceded that merchantable ware can be made without its use, still the advantages of using it are so great that as a commercial proposition the

ware can not be made without it. It is unnecessary to consider what legal consequences, if any, would follow if the record sustained this claim. It does not. It is true certain witnesses say that in their judgment the automatic dredgers have become necessities for the manufacture of the ware for commercial purposes. The record conclusively demonstrates that they are mistaken. Such concerns as the J. M. Kohler Sons Co. and the Iron City Sanitary Manufacturing Co. have no rights under any of the patents. There is no evidence of their having infringed them. They make and sell the ware in large quantities in competition with the licensed manufacturers. Moreover, if the experience of the concerns which had the right to use the patented dredger had convinced them that the ware could not without their use be made good enough and cheap enough to be sold in competition with them, it is not conceivable that they should have gone to all the trouble they did to induce those two concerns to take licenses. According to the defendants' present theory the refusal to do so was tantamount to commercial suicide. If factories without licenses could not make ware which could be sold in competition with that made by those who had licenses, the fewer who had licenses the better for those who had. (A, 118.)

The ware is absolutely unpatented. Anyone may sell it as freely as he may a loaf of bread. No one can tell by looking at a bathtub whether enameled powder has been sprinkled upon it by a patent dredger any

more than anyone who eats a loaf of bread can tell whether it has been baked in an oven with a patented grate, or who lights a kerosene lamp can tell whether in the process of refining a patented tool has been used, or by taking a pinch of snuff can be sure that there was or not a patented mill used in grinding the tobacco. (A, 118.)

Some of the testimony to the same effect follows:

William H. Lose, superintendent of Iron City Sanitary Manufacturing Company, had been engaged in the enameled-ware business 20 years. (IV, p. 261, folio 4; 262, folio 1; 263, folio 3.) He testified that it is possible to make good sanitary enameled ware with the hand dredgers. (IV, 261, folio 4.) The dredger is a tool used in the manufacture of sanitary enameled ware. The power dredger is a more convenient tool than the hand dredger, but it is not a necessity in the making of good sanitary ware. (IV, 262, folio 1.)

Frederick D. Cook, president and manager of the Blairsville Enameled Ware Company (IV, 245, folios 2 and 3; 250–253), with 14 years' experience in the making of sanitary enameled ware, declared one can make good sanitary enameled ironware with the hand dredgers (IV, 249, folio 2). The Arrott dredger is a more convenient tool than the hand dredgers, but it is not a necessity. The word "tool" correctly describes the patented dredger. (IV, 249, folio 4.)

John C. Reed. This witness was manager of the Standard Works of the Standard Sanitary Manufac-

turing Company (III, 379); a witness called by and favorable to the defendants, he testified that merchantable, salable, enameled ware was manufactured by the hand dredger prior to the introduction of the new dredger (III, 390, folio 4). "I consider it possible to make what would be classed as a fair tub by the hand dredge." (III, 391, folio 1.)

James W. Arrott, jr., inventor of the Arrott patent, was called by the defendants. See his testimony on cross-examination. (III, 423, folios 3 and 4; 424, folios 1 and 2.)

John A. Lefferts, general superintendent Colwell Lead Company, witness for the defendants. (IV, 155.) On cross examination the witness admitted that at the time he testified (April 21, 1911) they were using the hand dredger at his factory, during the night hours, because they did not wish to keep the compresser running in the nighttime to supply the air for the pneumatic dredger; in other words, the advantage of the Arrott over the hand dredger did not compensate for the additional cost of running the compressor. This company made no distinction in its sales between the ware made by the hand dredger at night and that by the air dredger in the daytime. (See cross-examination, IV, 157–159.)

Also A. Weiskittel & Sons Co., a corporation defendant, at the time one of its employees testified (Feb. 20, 1911) was using the hand dredger at night to save the expense of running the compressor. Counsel for the Government dragged this fact out on cross-examination from a reluctant witness, who,

on direct examination, had testified that the Arrott dredger is absolutely essential in order to make sanitary enameled ironware. (Fisher, III, 195, 212–217.)

Every witness summoned by the defendants testified on cross-examination that many important elements enter into the making of enameled ware. The chemical analysis of the iron, the formula for the enameling powder, and the composition of the slush are all important factors and secrets in the business.

Judge Rose says (A, 117):

> Whether the ware shall be well or ill made, whether it shall be durable or the reverse, whether it shall be sightly or unsightly, depends upon many circumstances of which the kind of dredger used to sprinkle the powder is only one and probably not the most important. Much turns on the composition of the enamel. Each factory makes it according to its own formula, which it tries to keep secret. Perhaps none of the powders in use give complete satisfaction. Experiments for their bettering are continually being made. How controlling a part the composition of the powder plays is shown by the account given by one of defendants' witnesses of the disastrous results upon the ware of an experimental change in the powder made since the first of the present year by one factory. The liquid enamel or slush coat must be properly made and fittingly applied. The furnaces must be adapted to the work to be done by them. The appliances for putting the ware into the furnace and for taking it out again

must be constructed so that with little consumption of time and labor the work will be done without damaging the delicate enamel not yet firmly fused upon its base. The castings must be well made and of the right kind of metal. It is quite possible that a new tool, appliance, or process may be invented for the better doing of any one of them. Its use may improve the average quality or cheapen the average cost of the ware, or both. Every such an inventor, if he obtained a patent for his invention, would be as much entitled as Wayman to say at what price and upon what terms men might deal in the finished article in some stage of the making of which his invention had been used.

(f) Defendants' testimony.

Defendants' testimony occupies Volumes III and IV, not including pages 245 to 268 in the fourth volume, which are given to the Government's rebuttal. The great bulk of defendants' testimony was introduced in an effort to establish the superiority of the automatic dredger over the hand dredger. Volume III, pages 1 to 426, contains such evidence only. Not one of the witnesses whose testimony is included within those pages attended any of the meetings of the defendants referred to above in this brief (p. 19) or knew anything about the license plan until it had been consummated, and then only what was told him by the superior officers of his company. (This statement does not apply to the witness Duryea, III, 259–282, a defendant and president of one

of the minor companies, who knew of the negotiations.) (See II, 131.)

Pages 427 to 469 of Volume III contain the evidence of five individual defendants summoned at Philadelphia by the defendant, Colwell Lead Company, in order to give them immunity. Having been warned by the counsel for the Government that they would gain no immunity, not having been summoned on the part of the United States (Goebel, III, 427), these witnesses refused to answer a number of questions, invoking the privilege against self-incrimination. The Colwell Lead Company applied to the court to compel them to answer, but United States District Judge Holland, on April 22, 1911, denied the application (187 Fed., 232), and this court declined to issue a writ of certiorari to review his decision May 29, 1911. (220 U. S., 623.)

The balance of Volume III, pages 470 to 528, and the first part of Volume IV, pages 1 to 22, contain testimony of other defendants summoned by the Colwell Lead Company for the same purpose, Judge Holland not having at that time rendered his decision. These witnesses also declined to answer a number of questions, some addressed to them by counsel for the Colwell Lead Company, some by their own counsel, and some by counsel for the Government. Their own counsel read certain allegations of the petition to them, which they severally denied, but when cross-examined by counsel for the Government respecting the same allegations they refused to answer on the ground of self-incrimination. (For

sample see cross-examination of A. C. Walker, III, 501 et seq.)

Counsel for the defendants called to the stand eleven jobbers. (IV, 25–98.) Each testified that he was not forced to sign the license contract; that conditions in the trade improved June 1, 1910; that seconds were eliminated, and that he made more money under the license arrangement than previously; finally, that the resale arrangement went to pieces January 1, 1911, and as a consequence seconds and bad ware again flooded the market, and he was making little, if any, profit.

On cross-examination each of these jobbers testified that from 80 to 95 per cent of his purchases was from defendants; that his jobbing business extended into several States; that he had observed the resale prices until January, 1911, and that most of the bad ware on the market since January 1 came from the defendants. (IV, 34, 52, etc.)

This latter testimony as to the source of seconds after January, 1911, confirms our contention that the so-called license arrangement was devised to control manufacturers' prices and jobbers' resale prices. If the defendants sought the use of the automatic dredger solely in order to eliminate seconds (Answer, A, 51), why did seconds appear on the market, after January 1, 1911, although all the defendants had obtained the right to use the automatic dredger?

The defendants closed with the testimony of Wayman, whom the Government had already examined

as a witness for the prosecution. (I, 1–217, 493–498, 523–529.) Counsel for the defendants examined him at great length (IV, 98–244), attempting to show that Wayman conceived the idea of a licensing arrangement under the Arrott patent; that he purchased it on his own initiative and bona fide; that there was no combination between the defendants, and that Wayman merely did what he had a right to do with his own. This theory calls for no comment here. As defendants had been cooperating with Wayman for months prior to the consummation of the plan the fact that the latter may have originated the idea and manner of combining is of no importance. "It can make no difference whether those personally assisting in or contributing to such wrongful result were original laborers in the vineyard or came at the eleventh hour—their statutory recompense is the same." (*United States* v. *MacAndrews & Forbes Co.*, 149 Fed., 823.)

(g) As to the Colwell Lead Co.

The status of the Colwell Lead Co., which appears by separate counsel, is in no wise different from that of the other defendants, in whose answer they at first joined (A. 67–77). Subsequently they filed another answer setting up the defense that they are not engaged in interstate commerce.

They signed the license agreement on May 25, 1910. (Ex. 14, II, 42.) Wayman's letter, made a part of that contract, and upon which their counsel placed so much emphasis in his examination of

Duryea (III, 267–268), does not qualify the contract. Its acceptance by the Colwell Co. is a recognition of the resale prices and conditions, and a promise to observe them, Wayman agreeing "If the resale conditions governing sales by jobbers to plumbers in the city of New York should become such that you would be seriously handicapped in the sale of your product to your plumbing trade, I, as licensor, hereby agree, *in case I can obtain the consent of the Commission provided for in the license,* to afford to you such relief as may be necessary."

When Duryea, president of the Colwell Co., was in the West, he received a memorandum of agreement which Wayman prepared March 2, and then wrote Wayman as follows:

> MARCH 15, 1910.
>
> Mr. E. L. WAYMAN.
>
> DEAR SIR: Yours of the 9th, enclosing memorandum of agreement, just received.
>
> In the abstract it looks good to me, providing all manufacturers sign up. However, I do not care to go on record regarding it until I have had an opportunity of going over it in detail with you, though of course we will be greatly influenced by what the other manufacturers do.
>
> I expect to be in my office about the 1st of April and will be glad to hear further from you.
>
> Yours, truly,
>
> J. T. DURYEA.

(III, 271; I, 145; see also Ex. 76, II, 131.)

Duryea's letter is typical of the attitude of the manufacturers toward each other. No defendant would have executed the agreement unless he had been certain that all the other defendants would execute it. (See also Ex. 78, II, 132, fol. 3; Ex. 84, II, 137; Ex. 85, II, 138; Ex. 93, II, 146, fol. 2.)

The Colwell Co. is engaged in interstate commerce; it ships its products from Elizabethport, N. J., to New York, Brooklyn, and Worcester, Mass. (III, 262, fol. 3); it sells from its New York office to Connecticut (III, 270).

Furthermore, the Colwell Co., as one of the combination, is restraining the interstate business of the other defendants, for it is in agreement with them as to prices and other terms of sale. Even if it is not itself engaged in interstate commerce, it is violating the Sherman Act by restraining the interstate commerce of others. (*Loewe* v. *Lawlor*, 208 U. S., 227.)

President Duryea was properly made a defendant in this action. In *U. S.* v. *American Tobacco Co.* (221 U. S., 106), this court held that the lower court erred in dismissing the bill as to the individual defendants, and that the decree, to afford adequate relief, should be directed against the officers of the corporation as well as against the corporation.

Judge Rose said in his opinion below respecting the Colwell Co. (A. 124):

> The Colwell Lead Co. says it is not engaged in interstate commerce. In our view it is.

It makes its ware in New Jersey. It sends it to warerooms in New York City and in Worcester, Mass., and there sells it. Its trade extends over several States. It alleges that it had no part in any of the negotiations leading up to the formation of the scheme, that it did not execute a license agreement until some three weeks after the other corporate defendants, and that then it refused to bind itself to charge the resale prices. It was consulted through its president sometime before any of the agreements were actually entered into or before their precise terms were definitely settled. He then gave a general approval of the plan. Neither he nor it appear to have done anything further until after the others had signed up.

PROPOSITIONS OF LAW.

I.

APPLYING THE RULE OF REASON TO THE FACTS IN THIS CASE, IT IS MANIFEST THAT DEFENDANTS BY MEANS OF THE LICENSE AGREEMENTS UNDULY AND UNREASONABLY RESTRAINED COMMERCE AND ATTEMPTED TO MONOPOLIZE COMMERCE IN ENAMELED WARE.

In every case we use the standard of reason for the purpose of determining whether or not an act or alleged restraint of commerce has brought about the injury from which the Sherman Antitrust Act is intended to guard the people. "In every case where it is claimed that an act or acts are in violation of the statute the rule of reason, in the light of the principles of law and the public policy which the

act embodies, must be applied." (Mr. Chief Justice White in *Standard Oil Co.* v. *U. S.*, 221 U. S., 1, 66.)

If the acts complained of have caused the wrongs which the statute forbade, resort to reason is not permissible to allow that to be done which the statute prohibits.

It matters not what form the combination may take, or what garb or dress it may put on, for if it directly restrain commerce it falls within the operation of the statute.

Mr. Chief Justice White said in the tobacco decision (221 U. S., 106) that it had been held in the Standard Oil case that the first and second sections of the act taken together

> embraced every conceivable act which could possibly come within the spirit or purpose of the prohibitions of the law, without regard to the garb in which such acts were clothed. That is to say, it was held that in view of the general language of the statute and the public policy which it manifested, there was no possibility of frustrating that policy by resorting to any disguise or subterfuge of form, since resort to reason rendered it impossible to escape by any indirection the prohibitions of the statute.

In the Northern Securities case, Mr. Justice Harlan, referring to the Sherman Act, said (193 U. S., 197, 347):

> No device in evasion of its provisions, however skilfully such device may have been con-

> trived, and no combination, by whomsoever formed, is beyond the reach of the supreme law of the land, if such device or combination by its operation directly restrains commerce among the States or with foreign commerce in violation of the act of Congress.

The appellants adopted in this case a form of combination different from any heretofore considered by this court. But it is the form alone that is new. Behind the grinning mask of the "license agreement" is the common, vulgar type of monopoly which many times has been condemned by this court, dangerous alike to "individual liberty and the public well being." (*U. S.* v. *American Tobacco Co.*, 221 U. S., 183.)

Two decisions of this court dispose of this case: *Continental Wall Paper Co.* v. *Voight & Sons Co.*, 212 U. S., 227, and *Dr. Miles Medical Co.* v. *Park & Sons*, 220 U. S., 373.

Each of the cases just cited involved a scheme of uniform contracts similar in character to the contracts under consideration in this case. The important difference between the two cases is that in the wall-paper case a combination of manufacturers attempted to control the prices of the products of all of the manufacturers, whereas in the proprietary-medicine case one manufacturer, while also having control of prices in view, restricted his plan to control of prices of his own products. In the first case the element of combination is present which is absent in the second. In each case the contracts were devised with the object of controlling the resale prices

of jobbers and of eliminating all competition between jobbers as to prices. Therefore, the two cases supplement each other, one holding that manufacturers can not combine through a selling agency and the other that a manufacturer can not control the prices on all sales of his products by all dealers at wholesale and retail.

Those cases dispose of this case. They did not involve patented articles and neither does this case.

If the Dr. Miles Medical Co., the manufacturer of the proprietary medicine, had used a patented boiler or other patented article in the process of making the secret compound, and if that fact had appeared in the record, would the decision have been different? Would the Medical Co. thereby have acquired a power to control prices which otherwise it did not possess? Suppose in the Wall Paper case one of the manufacturers had assigned to the selling company a patent on a machine for cutting, drying, or rolling paper, and that the company had then licensed each of the manufacturers to make and use the machine, and had incorporated in the licenses all the restrictions respecting the sale of the output of wall paper which were condemned by this court, would such an arrangement have been lawful?

Under the decision in the proprietary medicine case a manufacturer can not restrain commerce in his own products; it follows that he has no power to restrain the commerce in the products of other manufacturers. He can not license them to do what he can not do him-

self; nor can he do with theirs what he can not do with his own.

The Standard Co., during the time it owned the Arrott patent, could not lawfully have dictated to jobbers the prices at which they should resell the Standard products, which were not patented. So much the Miles Medical Co. case decides. How, then, could the Standard Co. transfer to Wayman a legal right to fix the resale prices not only on its own ware but on the ware of all the other manufacturers?

In the proprietary medicine case, it was conceded by both sides that a vendor of a bottle of patented medicine can not, after title has passed, impose upon the vendee any restraints of alienation by means of conditions governing the resale. In order to evade that well-known rule of the common law the vendor had arranged an elaborate system of so-called "agency contracts," by which he purported to retain title to himself, and to make the wholesale and retail druggists merely his agents. This court brushed aside the device and considered the transaction as a sale. It denounced the entire scheme of contracts devised by the drug company for the reason that it restrained the business of the wholesaler and the business of the retailer, after the title to the property had passed to them.

In the case at bar the restraints were imposed upon the enameled ware, title to which had never been in the licensor. The defendants entirely overlook the fundamental fact in this case, that the restraints substantially and directly affected the sale of enameled

ware, and only indirectly related to the use of the patented article.

We shall not attempt in this brief to review the numerous decisions of this court holding unlawful all combinations obstructing the free flow of interstate commerce, or interfering with the citizen's right to engage in commerce, or suppressing competition in commerce. These propositions are past dispute. For the convenience of court and counsel, we cite the principal decisions under the Sherman Act pertinent here:

Addyston Pipe & Steel Co. v. *U. S.*, 175 U. S., 211.

Trans-Missouri Freight Association v. *U. S.*, 166 U. S., 290.

Joint Traffic Association v. *U. S.*, 171 U. S., 505.

Montague v. *Lowry*, 193 U. S., 38.

Northern Securities Co. et al. v. *U. S.*, 193 U. S., 197.

Swift & Co. v. *U. S.*, 196 U. S., 375.

Bement v. *National Harrow Co.*, 186 U. S., 70.

Shawnee Compress Co. v. *Anderson*, 209 U. S., 423.

Loewe v. *Lawlor*, 208 U. S., 274.

Continental Wall Paper Co. v. *Voight*, 212 U. S., 227.

U. S. v. *Kissell*, 218 U. S., 601.

Dr. Miles Medical Co. v. *Park & Sons*, 220 U. S., 372.

Standard Oil Co. v. *U. S.*, 221 U. S., 1.

American Tobacco Co. v. *U. S.*, 221 U. S., 106.

U. S. v. *St. Louis Terminal Co.*, 224 U. S., 383.

U. S. v. *Dupont de Nemours Co.*, 188 Fed., 127.

Union Castle Mail S. S. Co. (Ltd.) v. *Thomsen et al.*, 190 Fed., 536.

Steele v. *United Fruit Co.*, 190 Fed., 631.

U. S. v. *Standard Sanitary Mfg. Co.*, 191 Fed., 172.

Steers et al. v. *U. S.*, 192 Fed., 1.

II.

THE MONOPOLY OF THE PATENTEE DOES NOT INCLUDE A CONTROL OVER COMMERCE IN AN ARTICLE IN THE MAKING OF WHICH THE PATENTED MACHINE IS USED.

Appellants assert that this case falls without the decisions cited in the last point and that their acts and agreements are lawful under that section of the United States statutes which grants to the inventor "the exclusive right to make, use, and vend the said invention or discovery throughout the United States." Appellants wholly disregard the fundamental fact of this case; the restraints complained of by the Government substantially and directly operate upon commerce in unpatented enameled ware, and only very indirectly and remotely, if at all, relate to the use of the patented article or dredger.

It was competition in commerce in unpatented bathtubs which appellants destroyed, and upon persons engaged in commerce in that ware they imposed

their unreasonable restraints. The prices established for the manufacturers, the resale prices made effective in resales by the jobbers, the prohibitions against the manufacturers selling to jobbers who had not signed, and against jobbers buying from independent manufacturers, the provisions enabling Wayman to audit the books of manufacturers and jobbers, the powers and duties of the price commission, all related to and were restraints upon commerce in unpatented articles. Not one of these restrictions concerned even remotely the price of patented dredgers or commerce in dredgers.

Appellant's counsel argue that the owner of a patent in licensing the use of his invention may attach conditions to the licensed use. This we grant (*Dick* v. *Henry*, 224 U. S., 1). There the court said (p. 24):

> The property right to a patented machine may pass to a purchaser with no right of use, or with only the right to use in a specified way, or at a specified place, or for a specified purpose.

But under the Dick decision restraints so imposed must be "legal and reasonable conditions," attached to the use of the patented article. They must be restrictions "not inherently violative of some substantive law." Mr. Justice Lurton said (p. 26):

> Where, then, is the line between a lawful and an unlawful qualification upon the use? This is a question of statutory construction.

It was upon this question that this court divided in the Dick case, the dissenting opinion holding that the restriction there under consideration was a restriction concerning the use of materials and not a restriction upon the use of the machine protected by the patent law. Mr. Chief Justice White said (p. 52):

> As the right to employ any desired operative materials in using the patented machine was not a right derived from or protected by the patent law, but was a mere right arising from the ownership of property, it can not be said that the restriction concerning the use of the materials was a restriction upon the use of the machine protected by the patent law. When I say "it can not be said," I mean it can not be so done in reason, since the inevitable result of so doing would be to declare that the patent protected a use which it did not embrace. And this, after all, serves to demonstrate that it is a misconception to qualify the restriction as one on the use of the machine, when in truth, both in form and substance *it was a restriction upon the use of materials* capable of being employed in operating the machine. (Italics ours.)

In the case at bar the restrictions in the first place were not reasonable and legal conditions attached to the use of the patented machine, for they restrained trade and promoted monopolization of commerce in articles not patented. In the second place, the restrictions were not attached to the use of the patented tool, but applied to acts *subsequent to the use;* that is, to what was done *after* the use of the tool em-

bodying the invention. The restraints were laid upon the distribution of and commerce in ware in the making of which the tool was used. It is not proper to speak of the ware as the product of the patented dredger. It would be as exact to speak of it as the product of the furnace, or the product of the enameling powder or the slush coat. Many processes and factors enter into the making of the ware. It is no more the product of the dredger than it is the product of any one of these processes and factors.

Not one of the unlawful conditions contained in the so-called license agreements was operative before or was coincident with the use of the dredger. All became effective subsequent to the use. In the Dick case, the restriction merely provided that in the use of the mimeograph the only paper used should be paper which had been supplied by the patentee. Therefore the condition became effective at the time of use of the patented article. There was no attempt to control the output of the mimeograph, or to fix the price at which the users of the mimeograph should sell the mimeographed copies.

Breach of the conditions in the Wayman licenses could occur only after the use of the patented Arrott dredger, for those conditions applied solely to acts performed after the use. Acts in interstate commerce subsequent to the use are not related to the use and accordingly conditions attached to those subsequent acts do not qualify the use. Therefore it is clear that sales to non licensed jobbers or at prices different from the estab-

lished prices do not in any sense constitute a use of the invention in a "prohibited way," but are, in fact, violations of those terms of the contracts which apply to the disposition of non patented articles. Can it in reason be argued that such sales subject the manufacturer or the jobber to an infringement suit by Wayman under the Arrott patent?

It is immaterial whether or not the patented tool is essential in producing the enamel ware for in any event no restriction laid upon the distribution of the ware in commerce can relate back so as to qualify even remotely the use of that tool during the manufacture of the ware.

The license agreement sustained by the Dick decision created no monopoly in unpatented things, for it left the whole world free to manufacture and sell paper and ink. It reserved to the patentee the sole right to supply specified unpatented articles to specified persons, but it did not prevent any other persons manufacturing and distributing those unpatented articles generally to all except to those who had bought the patented mimeograph. It gave to no one control either over the source of supply of the unpatented articles or over the demand for those articles, except in respect to the person who bought the patented mimeograph. As to him only was the market curtailed and the demand controlled.

On the other hand, in the case at bar the direct object of the appellants was to monopolize commerce in articles unpatented and of universal use. The

combination directly affected and absolutely controlled every phase of that commerce. It not only dictated the prices on sales from the manufacturers to the jobbers and every term and condition applicable to those sales, but also regulated in the same detail the sales of the jobbers to the plumbers. Moreover, every restriction contained in the agreements has been cruelly and oppressively enforced and maintained.

The language of Mr. Justice Lurton in the Continental Wall Paper case is peculiarly appropriate here (148 Fed., 939, 947):

> A more complete monopoly in an article of universal use has probably never been brought about. It may be that the wit of man may yet devise a more complete scheme to accomplish the stifling of competition. But none of the shifts resorted to for suppressing freedom of commerce and securing undue prices, shown by the reported cases, is half so complete in its details. None of the schemes with which this may be compared is more certain in results, more widespread in its operation, and more evil in its purposes.

A brief analysis of the contracts will prove how preposterous is the claim that the license agreements establish only such relations between the licensor and the licensee as are authorized by the patent laws.

The language of the license grant reads (Ex. 9, II, 20):

> The licensor hereby grants to the licensee, subject to the provisions hereinafter contained,

> a nonexclusive license to practice in the manufacture of sanitary enameled iron ware the processes patented in said several patents, to make and use in such manufacture the machines and devices patented in said patents, and to use and sell the goods so made.

The terms of this grant are much broader than the authority of the licensor. He has tried to convey what is not his to convey. Wayman's authority must be determined by the language of the letters patent. (Ex. 134 to 136, II, 189–205). The specification forming part of the letters patent issued to Arrott states (II, 190):

> This invention has relation to articles used for sifting and distributing powdered enameling material on the surface of bath tubs and other vessels, commonly known to the trade as "dredgers."

The inventor describes what is new as follows (II, 192):

> A dredger or sifter consisting of a screen or sieve and a supporting handle in combination with a pneumatic agitator attached to the dredger and adapted to vibrate the sieve, substantially as described.

The Dithridge and Lindsay patents relate to the same kind of tools, the first being a patent on a "pneumatic sieve" (II, 194) and the second a patent on an "enameling powder distributor" (II, 201).

Wayman incorporated in the license and purported to grant what was not his to convey. He did not own any patented processes, and therefore could

not grant a "nonexclusive license to practice in the manufacture of sanitary enameled iron ware the processes patented in said several patents." Wayman's patent was on a machine; it was not a patent on a process. (*Corning* v. *Burden*, 15 How., 252, 267; *Cochran* v. *Deever*, 94 U. S., 780, 787; *Burr* v. *Duryee*, 1 Wall., 531, 570; Telephone cases, 126 U. S., 1, 532–534; see also testimony of defendants' witness, E. M. Bentley, on cross examination, III, 374, fols. 3–4, and the Arrott specification forming part of the Letters Patent Ex. 134, II, 189–192).

Furthermore, the clause quoted above grants the manufacturer the right to make and use the machines and devices patented in said patents, "*and to use and sell the goods so made.*" "The goods so made," of course, are the sanitary enameled ware, and not the patented dredgers. Here again the drawer of the contract incorporated in the license and attempted to convey something which does not come within the domain of the patentee, for a patentee who grants a license to make and use the patented machine has no control, by virtue of his patent, over the article made with the help of the patented machine. This is a fundamental principle of patent law. (*Keplinger* v. *De Young*, 10 Wheat., 358; *Merrill* v. *Yeomans*, 94 U. S., 568.) By incorporating in the license agreement the grant of a right "to use and sell the goods so made," Wayman acquired no authority to dictate the prices at which the ware should be sold. By purporting to convey what was not his to convey, he

gained no authority which otherwise he would not have had.

It was to this ostensible grant of a right "to use and sell the goods so made" that Wayman attached the restraints which were the occasion of this action. Those restraints operated upon and obstructed commerce in the "goods so made."

This analysis of the license grant reduces the license to a right to "make and use in such manufacture the machines and devices patented in said patents." Every other word in the granting clause is meaningless.

The attempt to convey what the grantor had no title to convey was further carried out in the jobbers' license agreement and the price list. After reciting that the manufacturer was licensed under the three dredger patents which are enumerated, the jobbers' agreement between the manufacturer and jobber (Ex. 11, II, 32) continued:

> Whereas the purchaser desires to purchase from the company sanitary enameled iron ware embodying or made in accordance with such inventions and to obtain licenses to sell such ware to others, and the company is willing to sell sanitary enameled iron ware to the purchaser and license it for resale on the following terms and conditions, * * * etc.

Here in the first place it was stated that the jobber desired to purchase ware "embodying or made in accordance with said inventions." This language was purposely misleading, and to one who did not

understand the manner of manufacture gave the impression that it was the article embodying the invention that the jobber was buying, rather than the article made with the help of the patented machine. It should also be noted that the language contemplated a transfer of title of the ware from the manufacturer to the jobber, and yet the jobber, after he had purchased the ware, desired "to obtain licenses to sell such ware to others." This was a contradiction of terms. After the manufacturer had passed title, he had transferred all control over the property; a jobber had the right of resale, independently of any additional attempted transfer by the manufacturer, who had already sold all he had to sell.

Throughout this jobbers' license agreement the transaction between the manufacturer and jobber is referred to as a sale. The clause above quoted states: "The company is willing to *sell* sanitary enameled ironware to the purchaser and to *license it for resale* on the following terms." The next paragraph of the contract provides: "The company agrees to *sell* and the purchaser agrees to *buy*," etc. (II, 32.)

The clause relating to deliveries (II, 32) states: "Goods will be *sold* to the purchaser." Throughout the contract the jobber is called the *purchaser*. This case, therefore, is on all fours with the Miles medical decision, 220 U. S., 373. In that case, in order to evade the well-known rule of the common law that the vendor may not impose any restraints

of alienation upon the vendee after title has passed, the vendor had drawn up an elaborate system of so-called agency contracts, by which he purported to retain title in himself and to make the wholesale and retail druggists merely his agents. In this case the manufacturer uses the term "jobbers' license agreement" and attempts to convey the impression that the restraints have been imposed by a patentee instead of by the manufacturer.

The price list adopted by the defendants carries out and completes the misrepresentation as to the patents and patentability of the article sold. Like the manufacturers' and jobbers' license agreement, it abounds in terms of the patent law incorrectly used, plainly for the purpose of hoodwinking the buyer into believing that he is buying a patented article. "Licensed sanitary enameled iron ware," "patented automatic enameling processes," "licensed companies," "patented processes," "licensed label," "licensed ware," "patented," "this fixture is manufactured in accordance with the following United States letters patent," are some of the terms appearing on the cover and first page of the price list, which are also decorated with the numbers of the three patents conspicuously displayed (II, 74–75).

The placing of a label upon the enameled ware containing a notice that the "licensed ware" is "patented" (see II, 75) constitutes a violation of sec. 4901, U. S. Revised Statutes, which gives a *qui tam* action against one who has placed upon an unpatented article the word "patent" or any word purporting

that the same is patented, for the purpose of deceiving the public into believing that the article is covered by a patent.

The inventor of the Arrott dredger could not have patented the enameled ware made with the help of his patented dredger, for the ware so made was not new in the sense of the patent law. "New articles of commerce are not patentable as new manufactures, unless it appears in the given case that the production of the new article involved the exercise of invention or discovery *beyond what was necessary to construct the apparatus for its manufacture or production.*" (Mr. Justice Clifford in *Collar Co.* v. *Van Dusen*, 23 Wall., 530, 653, citing authorities.) By what principle of law may the owner of the Arrott patent project his monopoly so as to embrace articles upon which letters patent could never have been issued? Yet in this case he arrogates to himself an authority to dictate the price of an article which he could not have patented and justifies himself by pointing out that he owns something else which is patented.

III.

No word or phrase in the Sherman Antitrust Act reveals an intent to exempt the owners of patents from its sweeping provisions against monopolistic combinations.

We have above pointed out that the unlawful combination of which the United States complain in this case relates to commerce in unpatented articles. No patent question is in fact here involved. The

license arrangement was but a device adopted by the defendants in order to give to the combination the appearance of legality. Only if this court shall hold that unpatented enameled-ware commodities are to be given in commerce all the rights to which patented articles are entitled, because made in part by means of a patented tool, can the question arise for decision whether or not combinations relating to patented articles are exempt from the prohibitions of the Sherman Act.

We contend that the patent laws and the Sherman law are not conflicting, but in their respective domains are mutually exclusive of each other. The Supreme Court of Massachusetts said in a recent opinion by Mr. Chief Justice Rugg (*United Shoe Machinery Company* v. *La Chapelle*, 99 N. E., 289):

> No word or phrase in the Sherman Antitrust Act reveals an intent to exempt the owners of patents from its sweeping provisions against monopolistic combination.

An analysis of the nature of the right conferred by the patent franchise makes this clear.

The right conferred by the patent laws is not the right to make, use, and vend the thing patented, for this right exists by virtue of the common law and independently of the patent statutes; this right to make, use, and sell the patented device is a natural right. The only right which the letters patent grant is the right to exclude all other persons from making, using, or vending the thing patented without the permission of the patentee.

Mr. Chief Justice Taney said, in *Bloomer* v. *McQuewan* (14 Howard, 539, at p. 548):

> The franchise which the patent grants consists altogether in the right to exclude everyone from making, using, or vending the thing patented without the permission of the patentee. That is all that he obtains by the patent.

In *Patterson* v. *Kentucky* (97 U. S., 501) Mr. Justice Harlan used the following language (p. 506):

> The right to sell the Aurora oil was not derived from the letters patent, but it existed and could have been exercised before they were issued, unless it was prohibited by valid local legislation. All which they primarily secure is the exclusive right in the discovery. That is an incorporeal right.

This right to sell a patented article is subject to the police regulations of the State. In *Patterson* v. *Kentucky* (97 U. S., 501, 505), this court upheld a statute of Kentucky which prohibited the sale of patented oil which the State inspector had condemned as unsafe for illuminating purposes. The defendant asserted a right to sell the oil by virtue of his letters patent, but Mr. Justice Harlan said, page 505:

> We are of opinion that the right conferred upon the patentee and his assigns to use and vend the corporeal thing or article, brought into existence by the application of the patented discovery, must be exercised in subordination to the police regulations which the State established by the statute of 1874.

In *Webber* v. *Virginia* (103 U. S., 344, 347), Mr. Justice Field said:

> Congress never intended that the patent laws should displace the police powers of the States, meaning by that term those powers by which the health, good order, peace, and general welfare of the community are promoted. Whatever rights are secured to inventors must be enjoyed in subordination to this general authority of the State over all property within its limits.

In the case of *In re Brosnaham* (18 Fed., 62) the defendant had sold oleomargarine upon which there was a patent, in violation of a law of Missouri prohibiting such sale. Mr. Justice Field, in answer to the argument of defendant that he was protected by his patent rights, said, page 165:

> Suppose a discovery of a cheap mode of producing intoxicating liquor, in regard to which the inventor obtains a patent for the product, does this authorize him to defy the entire system of State legislation for the suppression of the use of such drinks? The answer is that the purposes of the patent law and of the constitutional provision are answered when the patentee is protected against competition in the use of his invention by others; and when the law prevents others from infringing on his exclusive right to make, use, or sell, its object is accomplished. This proposition is fully supported by the Supreme Court in the case of *Patterson* v. *Kentucky* (97 U. S., 501).

In the cases last cited the exercise of the police power of a State in prohibiting the sale of patented articles was held not to be in conflict with the patent laws of Congress. If the State may prohibit altogether the sale of patented articles because of injury resulting from such sale to its citizens, it follows that the State may prohibit the sale of patented articles pursuant to combinations in restraint of intrastate trade and commerce, for such combinations are equally harmful to the public. In the one case the State is prohibiting any sale, in the other case it is merely regulating the sale of the patented article in so far as it declares that no such sale shall be made under any unlawful combination monopolizing or restraining intrastate commerce. In either case the State is exercising its police power to protect its citizens; neither exercise of power conflicts with the patent laws. The reason is clear. The regulation of the State is being applied to natural rights and not to patent rights. The right to sell, a common-law right, is denied by the State in the one case and regulated in the other, the State acting in each case for the good of the public.

In passing the so-called antitrust statutes Congress and a State legislative body act under different sources of power, but in each case the exercise of the power arrives at the same result, namely, prohibition of restraints of trade and of monopolies. The effect of the State act and of the Sherman Act is the same; that is, the two acts relate to and operate upon the same subject matter, although one is enacted under

the police power of the State and the other under the authority of Congress to regulate interstate commerce. If the exercise of the police power of the State does not encroach upon the domain of the patent laws, how can it be said that to include within the operation of the Sherman Act combinations restraining trade is to subtract from the monopoly of the patentee?

Judge Rose says in his opinion in the court below (A. 120):

> A patentee is as much subject to the laws of the land as is any other man. All men know that Congress never intended, when it passed the Sherman Act, to change the patent law. It did not do so. The patentee may, in spite of that law, monopolize for the term of his patent the thing which he or his assignor invented. Neither at common law nor in this country by statute has he ever had a right to monopolize anything else. As to everything not validly claimed in his patent he is as other men. If by the common law or the statutes of the State or by the enactments of Congress men are forbidden to restrain trade or to monopolize it, a patentee may not restrain trade or attempt to monopolize it in anything except that which is covered by his patent.
>
> * * * * *
>
> It does not give a right to the patentee to sell indulgences to violate the law of the land, be it the Sherman Act or another.
>
> * * * * *
>
> A patentee who monopolizes his invention breaks no law. He who uses his property

> right to exclude others from the making, selling, or using his invention for the purpose and with the effect of making a combination to restrain trade in something from which his patent gives him no right to exclude others, does break the law.
>
> * * * * *
>
> He can not use his patent rights to restrain trade in unpatented bathtubs.

In *United Shoe Machinery Co.* v. *LaChappelle* (*supra*) the United Shoe Machinery Company sought to compel an assignment to it of a patent taken out by defendant, who had contracted to assign to the company all patents taken out by him. The defense was that the plaintiff was a consolidation of seven or more previously competing companies controlling 90 to 95 per cent of the shoe-machinery business, and that the contract was in direct aid and furtherance of that monopoly. The Supreme Court of Massachusetts held this to be a valid defense. The question was whether a combination among several patentees of competing devices is within the inhibition of the statute. Rugg, C. J., said (99 N. E., 291):

> The holder of a patent is given an absolute monopoly of the invention covered thereby, not affected in any degree by the Sherman antitrust act. He may refuse to use it, or may use it in part only, or grant its use to others upon conditions, and he may prevent all others from infringing in any way upon the rights thus secured to him. (*Continental*

Paper Bag Co. v. *Eastern Paper Bag Co.*, 210 U. S., 405.) But he is given no immunity from general police regulations. There is nothing inherent in his patent or in the nature of his peculiar privileges, which enables him to be free from general laws enacted for the common good.

* * * * *

The monopoly protected by the patent goes no further than the invention and contractual obligations attached to it. It does not protect other commercial ventures attempted by the owner, even though indirectly or remotely they may relate to the invention.

* * * * *

Conditions and combinations are different in kind. They are distinguishable not in degree but in substance. Conditions annexed by the patentee to the enjoyment of an invention are legal even though resulting in an extended monopoly. Combinations among patentees resulting in an extended monopoly are illegal.

* * * * *

Protection by patent is established by Congress. It is not a constitutional guaranty, but depends wholly on the statutes. An act of Congress directed against evils which were assumed to arise from the monopolistic combination of those engaged in interstate commerce comes from the same source and carries the same obligations of enforcement as do the patent laws. No word or phrase in the Sherman antitrust act reveals an intent to

> exempt the owners of patents from its sweeping provisions against monopolistic combination. We are unable to perceive any underlying reason for supposing that by implication growing out of economic or business conditions such an exemption was intended. There appears to be no inherent natural distinction between owners of patents and owners of oil which would justify the application of the statute to one and not to the other. The conclusion seems to follow that the comprehensive condemnation of the act against every person who monopolizes interstate commerce by combination with others includes holders of patents as well as others.

By means of their combination, the appellants brought under one ownership three competing patents relating to automatic dredgers; those were the only automatic dredgers on the market. This act of itself was a violation of the Sherman law.

Blount Mfg. Co. v. *Yale & Towne Mfg. Co.*, (166 Fed., 555).

Strait v. *National Harrow Co.* (18 N. Y. Sup., 224).

National Harrow Co. v. *Quick* (67 Fed., 130).

National Harrow Co. v. *Hench* (76 Fed., 667).

National Harrow Co. v. *Hench* (83 Fed., 36).

National Harrow Co. v. *Hench* (84 Fed., 226).

National Harrow Co. v. *Hench* (85 Fed., 991).

Bement v. *National Harrow Co.* (186 U. S., 70).

Vulcan Powder Co. v. *Powder Co.* (96 Cal., 510).

Gamewell v. *Crane* (160 Mass., 50).

Page on Contracts (vol. 1, 445).

In *Blount Mfg. Co.* v. *Yale & Towne Co.*, the manufacturers of patented liquid door checks eliminated competition by means of a tripartite agreement. In an action brought on the agreement by one manufacturer against another, the illegality of the contract was set up as a defense. District Judge Brown said (p. 557):

> A contract whereby the manufacturers of two independent patented inventions agree not to compete in the same commercial field deprives the public of the benefits of competition, and creates a restraint of trade which results, not from the granting of letters patent, but from agreement. While the monopoly of the patented article is not increased, the monopoly of the commercial field is increased by the "unified tactics" as to prices.
>
> * * * * *
>
> Where, however, each patentee continues to make his own goods under his own patents, and seeks to enhance his profits by an agreement with competitors, who make either patented or unpatented articles, then it seems to follow that the agreement of each to restrain his own trade can not be regarded merely as an incident to the assignment of patent rights. The patentee then restrains his own trade, not

for the purpose of enhancing the value of the license which he grants, but for the purpose of enhancing the value of his trade by removing competition.

* * * * *

The proposition that an agreement not to manufacture or to restrain trade is within some rights of nonuse conferred upon a patentee seems unsound, if we consider the nature of the grant of letters patent. The right of the patentee or of his assignee to withhold the invention is quite apart from any grant contained in the letters patent. The privilege of restraining others is granted to the owner of letters patent. He is given no right or privilege to restrain himself. By the terms of the patent he has the exclusive right to make, use, and vend. The right to make, use, and vend he has without the grant of letters patent. When we say that a patent grants an "exclusive right," we do not mean that the right to make, use, and vend is granted, but only that the patentee's existing right is made exclusive by the grant (p. 558).

After citing the *Paper Bag patent case* (210 U. S., 424) and *Bloomer* v. *McQuewan* (14 How., 549), he continues (p. 559):

The right of a patentee to suppress his own rests upon ordinary considerations of property right. The public has no right to compel the use of patented devices or of unpatented devices when that is inconsistent with fundamental rules of property. When a patentee agrees, however, to restrain his own trade in

> the article of his own invention, not as an incident to a granting of rights but for the purpose of enhancing his price by the removal of competitors, he is then quite outside the sphere of any right granted to him by the Government. He may engage in interstate trade or not, as he pleases; but, being engaged in that trade he is subject to all restrictions upon interstate traders.

And in conclusion he says, on page 562:

> Combinations between owners of independent patents, whereby, as part of a plan to monopolize the commercial field, competition is eliminated, are within the Sherman Act, for the reason that the restraint of trade or monopoly arises from combination, and not from the exercise of rights granted by letters patent.

National Harrow Co. v. *Hench* (83 Fed., 36) was a decision by the Circuit Court of Appeals of the Third Circuit. In that case the manufacturers of float spring tooth harrows assigned all their patents to the National Harrow Co., immediately taking out licenses to manufacture and sell at fixed prices. On an action to recover royalties, the court held the arrangement unlawful, stating (p. 38):

> Patents confer a monopoly as respects the property covered by them, but they confer no right upon the owners of several distinct patents to combine for the purpose of restraining competition and trade. Patented property does not differ in this respect from any other. The fact that one patentee may possess himself

> of several patents, and thus increase his monopoly, affords no support for an argument in favor of a combination by several distinct owners of such property to restrain manufacture, control sales, and enhance prices. Such combinations are conspiracies against the public interests and abuses of patent privileges. The object of these privileges is to promote the public benefit, as well as to reward inventors. The suggestion that the contract is justified by the situation of the parties—their exposure to litigation—is entitled to no greater weight. Patentees may compose their differences, as the owners of other property may, but they can not make the occasion an excuse or cloak for the creation of monopolies to the public disadvantage.

In a case with the same title, reported in 84 Fed., 226, District Judge Cox said of the same combination:

> The complainant was created solely to effectuate the purpose of the combination, the patent in suit being transferred as part of the unlawful scheme.

In the case reported in 76 Fed., 667, Circuit Judge Acheson said (p. 669):

> It is true that a patentee has the exclusive control of his invention during the life of the patent. He may practice the invention or not, as he sees fit, and he may grant to others licenses upon his own terms. But where, as was the case here, a large number of independent manufacturing concerns are engaged in making and selling, under different patents and in various forms, an extensively used

> article, competition between them is the natural and inevitable result, and thereby the public interest is promoted. Therefore a combination between such manufacturers which imposes a widespread restraint upon the trade and destroys competition is as injurious to the community and as obnoxious to sound public policy as if the confederates were dealing in unpatented articles.

Bement v. *National Harrow Co.* (186 U. S., 70) was an action brought in the New York State Supreme Court to recover royalties. The plaintiff, although having the same name, was not the company mentioned in the cases last cited. The defendant set up that the license entered into by him was but one of many licenses issued by the plaintiff to all the manufacturers. The referee, however, did not find that any licenses or contracts other than those between the parties to the suit had been entered into, and therefore the single question before the Supreme Court was whether the licensor could lawfully establish, for observance by the licensee, the prices at which the patented article was to be sold in interstate commerce. This court pointed out in its opinion a number of times that the question of combination between the manufacturers was not before it, saying (p. 85):

> The omission of the referee to find from the evidence that the contracts A and B were a continuation of former contracts held to have been void, and that there were in fact other manufacturers of harrows who had entered

into the same kind of contracts with plaintiff as those denominated A and B, and that there was a general combination among the dealers in patented harrows to regulate the sale and prices of such harrows, furnishes no ground for this court to assume such facts. The contracts A and B are to be judged by their own contents alone and construed accordingly.

The appellants rely upon the following cases:

United States Consolidated Seeded Raisin Co. v. *Griffin & Skelly Co.* (126 Fed., 364).

Rubber Tire Wheel Co. v. *Milwaukee Rubber Tire Works* (142 Fed., 531; 154 Fed., 358).

Indiana Mfg. Co. v. *Case Threshing Machine Co.* (148 Fed., 21; 154 Fed., 365).

In the Raisin case the plaintiff owned patents covering machines for seeding raisins and had licensed the defendants and others to use the machines, subject to a royalty measured by the number of pounds of raisins seeded. There was no attempt to control the price of raisins in interstate commerce. Therefore the decision is inapplicable here.

In the Threshing Machinery case the court was considering patents on pneumatic straw stackers owned by the plaintiff, which had licensed the defendant and others to manufacture the stackers and sell them at fixed prices. The pneumatic straw stacker enabled the farmer to stack the straw by machinery instead of by hand. If the licensor had attempted to fix the price at which the stacks of straw were sold, after stacking, the case would be parallel to this case. Furthermore, there was no

evidence of any combination between the manufacturers to frame uniform licenses.

The Rubber Tire cases, like the decision last cited, dealt with prices fixed upon a patented article, a rubber tire manufactured under the patent of Grant, "who had produced a new integer in the useful arts." The decision is clearly wrong and contrary to the decisions above cited in the Yale & Towne and National Harrow cases; in any event it is no authority in the case at bar, because the restraints related to patented articles.

The appellants also rely upon two groups of cases, the first sustaining restrictions imposed upon the use of a patented machine and the second upholding conditions imposed by the patentee-vendor, fixing the resale prices and other terms of resale of the article covered by the patent.

Under the first group may be cited *Dick* v. *Henry* (*supra*) decided since the decision below was rendered, *Heaton Peninsular Button Fastener Co.* v. *Eureka Specialty Co.* (77 Fed., 288; 65 Fed., 619); *Cortelyou* v. *Lowe* (111 Fed., 1005; 114 Fed., 1021); *Cortelyou* v. *Carter's Ink Co.* (118 Fed., 1022); *Broderick Copygraph Co.* v. *Roper* (124 Fed., 1019); *Mayhew* v. *Broderick Copygraph Co.* (137 Fed., 596; 131 Fed., 92); *Cortelyou* v. *Johnson* (138 Fed., 119; 145 Fed., 932; 207 U. S., 196); *Tubular Rivet Co.* v. *O'Brien* (93 Fed., 200); *Rupp* v. *Elliott* (131 Fed., 730).

The second group includes *Edison Phonograph Co.* v. *Kauffman* (105 Fed., 960); *Edison Phonograph*

Co. v. *Pike* (116 Fed., 863); *Victor Talking Machine Co.* v. *The Fair* (123 Fed., 424); *National Phonograph Co.* v. *Schlegel* (128 Fed., 733, reversing 117 Fed., 624); *Ingersoll* v. *Snellenburg* (147 Fed., 522); *New Jersey Patent Co.* v. *Schaeffer* (159 Fed., 171).

None of the cases in either of the above groups is applicable for the reason that no question of combination under the Sherman Antitrust Act was involved in those cases. Each of them involved conditions attached to the use or sale of patented articles. None of the conditions had been arrived at by a combination of competing manufacturers in order to suppress competition between them.

IV.

The Lower Court Rightly Refused to Extend the Time of Appellants to Take Testimony.

Whether appellants were entitled to further time for the taking of testimony was a matter resting in the discretion of the lower court.

It is manifest that the appellants had ample opportunity to present evidence. The taking of testimony by the petitioner commenced October 31, 1910 (I, 3), and ended December 22, 1910 (I, 530, 573).

The appellants had from December 22, 1910, until and including April 22, 1911. (IV, 154, 244.)

The Government's rebuttal occupied only one day (April 24, 1912). (IV, 245.)

The fact that after December 6, 1911, an indictment was pending against the corporation defendants

and many of the individual defendants for the same transactions furnished no reason for postponing the taking of testimony in the civil suit.

The Sherman Act provides four remedies, as follows:

1. A criminal proceeding to punish those guilty of violating the act (sec. 1, 26 Stat., 209).

2. A suit in equity to prevent and restrain violations (sec. 4).

3. Forfeiture of any property owned under any combination and in course of transportation from one State to another (sec. 6).

4. An action in treble damages to be brought by any person injured by reason of anything forbidden by act (sec. 7).

The lower court rightly held that the wisdom of the law and the effect of rigid enforcement are not matters for consideration by the court, but by other departments of the Government. This court has said (*Armour Packing Co.* v. *U. S.*, 209 U. S., 56, 82):

> It is the province of the judiciary to enforce the laws constitutionally enacted, not to make them to suit their own views of propriety or justice.

The summoning as witnesses of individual defendants by the defendant Colwell Lead Company was a scheme invented by counsel for the appellants and deliberately adopted for the purpose and with the hope of securing immunity for the individual defendants so called. Under the circumstances it was the duty of counsel for the United States to

notify such witnesses that if they testified they could not thereafter claim immunity, and that therefore they were entitled, relying upon the fifth amendment, to refuse to answer such questions as would incriminate them. (Wigmore on Evidence, Vol. III, sec. 2269.)

The Colwell Lead Company was not prejudiced by the refusal of the witnesses to answer. The questions were not asked in good faith by counsel for the Colwell Lead Company, but solely for the purpose of giving the defendants an opportunity of testifying so that they might claim immunity in the criminal proceeding. See the opinions of Judges Holland and Denison upon the immunity questions referred to in appellant's brief. (*U. S.* v. *Standard San. Mfg. Co.*, 187 Fed., 257; *Same* v. *Same*, 187 Fed., 232.)

The following defendants were summoned by the Colwell Lead Company:

Theodore Ahrens, president of the Standard Sanitary Manufacturing Company (III, 460).

Edwin L. Dawes, second vice president and general manager of the Standard Sanitary Manufacturing Company (III, 471).

George W. Franzheim, formerly connected with the Wheeling Sanitary Manufacturing Company as secretary and treasurer (III, 514).

Howard T. Gates, secretary of the McCrum Howell Company (III, 445).

Max Goebel, secretary J. L. Mott Iron Works (III, 427).

Lloyd G. McCrum, president of the McCrum Howell Company (III, 436).

William A. Myler, secretary and treasurer of the Standard Sanitary Manufacturing Company (III, 519).

Francis J. Torrance, vice president of the Standard Sanitary Manufacturing Company (III, 452).

Alexander C. Walker, secretary and treasurer of the McVay-Walker Company (III, 490).

Thomas Walker, president McVay-Walker Company (III, 481).

Anton Weiskittel, president Weiskittel Sons Company (III, 504).

No question material to the defense of the Colwell Company was addressed to those witnesses by the counsel for that company. Cooperating with their own counsel, he was seeking only to gain immunity for them.

V.

For the reasons stated, we respectfully submit that the decree below should be affirmed.

GEORGE W. WICKERSHAM,
Attorney General.

EDWIN P. GROSVENOR,
Special Assistant to the Attorney General.

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STANDARD SANITARY MANUFACTURING COMPANY *v.* UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

No. 554. Argued October 15, 16, 17, 1912.—Decided November 18, 1912.

A trade agreement under which manufacturers, who prior thereto were independent and competitive, combined and subjected themselves to certain rules and regulations among others limiting output and sales of their product and quantity, vendees and price, *held* in this case to be illegal under the Sherman Anti-trust Act of July 2, 1890. *Montague* v. *Lowry*, 193 U. S. 38.

A trade agreement involving the right of all parties thereto to use a certain patent, which transcends what is necessary to protect the

use of the patent or the monopoly thereof as conferred by law and controls the output and price of goods manufactured by all those using the patent, is illegal under the Anti-trust Act of 1890. *Bement* v. *National Harrow Co.*, 186 U. S. 70, and *Henry* v. *A. B. Dick Co.*, 224 U. S. 1, distinguished.

While rights conferred by patents are definite and extensive, they do not give a universal license against positive prohibitions any more than any other rights do.

The Sherman Anti-trust Act is a limitation of rights which may be pushed to evil consequences and should therefore be restrained.

The character of the Sherman Act is sufficiently comprehensive and thorough to prevent evasions of its policy by disguise or subterfuge.

The Sherman Act is its own measure of right and wrong; courts cannot declare an agreement which is against its policy legal because of the good intentions of the parties making it.

A party to an agreement in restraint of trade is none the less a party to the illegal combination created thereby because it is not subject to all the restrictions imposed upon all the other parties thereto.

A corporation having a manufactory in one State and warehouses in several other States held to be engaged in interstate commerce under the circumstances of this case.

Quære, whether one of the individual defendants in an equity case brought by the Government to dissolve an illegal combination under the Sherman Act, called as a witness by one of the other defendants in the same suit, obtains immunity from criminal prosecution as to the matters testified to.

There is no rule that civil suits brought under the Sherman Act to dissolve the combination must await the trial of criminal actions against the same defendants, and whether the trial of the civil action shall be delayed because some of the defendants refuse to testify as witnesses for other defendants is a matter in the discretion of the trial court, and in the absence of abuse, not reviewable.

191 Fed. Rep. 172, affirmed.

THE facts, which involve the legality under the Sherman Anti-trust Act of July 2, 1890, 26 Stat. 209, c. 647, of a combination of manufacturers, are stated in the opinion.

Mr. Herbert Noble, with whom *Mr. Henry D. Estabrooke* and *Mr. Hartwell P. Heath*, were on the brief, for appellants other than Colwell Lead Company:

The gravamen of the Government's charge is that the scheme in this case amounted to a wicked conspiracy to circumvent the Sherman Act by basing it on a patented invention of slight or no importance which was used only as a subterfuge. Whether it is wicked to attempt to circumvent the Sherman Act depends somewhat upon the meaning of the Sherman Act as well as the meaning of the word "circumvent." Translated literally, according to its rhyme and not its reason, the Sherman Act is a blight upon enterprise. The venom of anarchy could not elaborate a more enervating, paralyzing proscription. All business would be under the ban of the law; with the result that it would be left to the caprice or favor of the Attorney-General to give immunity to favorites or punish enemies. If the Sherman Act means this, then we make bold to say that it is the righteous duty of every lawyer to circumvent the Sherman Act if it can be accomplished.

Where a man's remedy for a wrong is barred at law he does not circumvent the law if he resorts to equity. If what was done was legal, the question of motive is clearly immaterial. *Diamond Match Co.* v. *Roeber*, 106 N. Y. 473; *McCune* v. *Norwich Gas Co.*, 30 Connecticut, 521; *Glendon Iron Works* v. *Uhler*, 15 Am. Rep. 599; 20 Harvard Law Rev., Nos. 4, 5 and 6.

Irrespective of patent law or patent rights the acts of the defendants did not in any reasonable sense create a monopoly, restrain commerce, limit output, nor throttle competition, nor were they obnoxious to any fair reading of the Sherman Act. The rule of possible evil—that the mere power to do evil is equivalent to the actual doing of it would make potential bomb throwers of every one. In the very nature of things the law may not punish anyone for the wrong he might do if he were so disposed.

The court below erred in not decreeing that the agreements entered into by the defendants and upon which the petition is based were lawful under the patent laws of the

United States and not subject to the provisions of the Sherman Anti-trust Act.

Similar license agreements were sustained by the courts in *Rubber Tire Wheel Co.* v. *Milwaukee Rubber Works Co.*, 154 Fed. Rep. 358; *Indiana Mfg. Co.* v. *Case Threshing Mach. Co.*, 154 Fed. Rep. 365; *Goshen Rubber Works Co.* v. *Single Tube Tire Co.*, 166 Fed. Rep. 431; *Victor Talking Mach. Co.* v. *The Fair*, 123 Fed. Rep. 424; *Heaton Peninsular Co.* v. *Eureka Specialty Co.*, 77 Fed. Rep. 294.

The provisions in the license agreements as to prices were intended to enable the licensees to make a reasonable profit, so that they would be able to maintain and improve the quality of the ware, and pay the royalties reserved. The owner of a patent can protect his invention by making agreements controlling the product of the use of his invention, and which admit that by the use of that invention the product is better than if made by any other known method of manufacturing the product. *Henry* v. *A. B. Dick Co.*, 224 U. S. 1.

The constitutional idea of a time monopoly in a new creation is profoundly wise, as all experience has demonstrated. The right to withhold the use of an invention necessarily involves a right to attach to its use any condition however arbitrary, for the public is none the poorer if the invention is never used, whereas it may be benefited if the invention is brought into use on any terms; and in any event the monopoly lapses with the lapse of time, or is perhaps made valueless by a newer invention inspired by the one it supersedes. Cases *supra* and *Bloomer* v. *McQuewan*, 14 How. 539, 548; *United States* v. *American Bell Tel. Co.*, 167 U. S. 224; *U. S. Consol. S. R. Co.* v. *Griffin & Skelley Co.*, 126 Fed. Rep. 364; *Rupp & Wittgenfeld Co.* v. *Elliott*, 131 Fed. Rep. 730; *New Jersey Patent Co.* v. *Schaeffer*, 159 Fed. Rep. 171; *New Jersey Patent Co.* v. *Schaeffer*, 178 Fed. Rep. 276; *Fonotipia, Ltd.*, v. *Bradley*, 171 Fed. Rep. 951; *National Phonograph Co.* v. *Schlegel*,

128 Fed. Rep. 733; *Edison Phonograph Co.* v. *Pike*, 116 Fed. Rep. 863; *Edison Phonograph Co.* v. *Kaufmann*, 105 Fed Rep. 960; *The Fair* v. *Dover Mfg. Co.*, 166 Fed. Rep. 117; *Commercial Acetylene Co.* v. *Autolux Co.*, 181 Fed. Rep. 387; *Æolian Co.* v. *Juelg Co.*, 155 Fed. Rep. 119; *Crown Cork Co.* v. *Brooklyn Bottle Stopper Co.*, 172 Fed. Rep. 225; *Crown Cork Co.* v. *Standard Brewery*, 174 Fed. Rep. 252; *Crown Cork Co.* v. *Standard Stopper Co.*, 136 Fed. Rep. 841; *Cortelyou* v. *Lowe*, 111 Fed. Rep. 1005; *Cortelyou* v. *Carter*, 118 Fed. Rep. 1022; *Cortelyou* v. *Johnson*, 138 Fed. Rep. 110; *S. C.*, 145 Fed. Rep. 933; *Brodrick Copygraph Co.* v. *Roper*, 124 Fed. Rep. 1019; *A. B. Dick Co.* v. *Milwaukee Co.*, 168 Fed. Rep. 930; *Indiana Mfg. Co.* v. *Nichols & Shepard Co.*, 190 Fed. Rep. 579; *Automatic Pencil Sharpener Co.* v. *Goldsmith Bros.*, 190 Fed. Rep. 205; *Thomas A. Edison, Inc.*, v. *Smith*, 188 Fed. Rep. 925; *Waltham Watch Co.* v. *Keene*, 191 Fed. Rep. 855; *Fuller* v. *Berger*, 120 Fed. Rep. 274; *Broderick Copygraph Co.* v. *Mayhew*, 131 Fed. Rep. 92; affd. 137 Fed. Rep. 596.

No attack is or could be made upon the validity of the patents, because the Arrott patent has been upheld by the courts. *Mott Iron Works* v. *Standard Sanitary Mfg. Co.*, 159 Fed. Rep. 135.

The inventions covered by the patents are automatic devices adapted to distribute enameling powder over the surface of the various articles of sanitary enameled iron ware while at a very high temperature.

Under the principle of the *Paper Bag Patent Case*, 105 U. S. 766, the owner of the letters patent here might have permitted the use of his invention for the purpose of manufacturing sanitary enameled iron ware upon condition that it should not be sold at all, and consequently that it might be sold upon prescribed conditions.

The court below erred in not decreeing that the agreements entered into by the defendants, and upon which the petition is based, were not in restraint of interstate

trade and commerce and not in violation of the Sherman Anti-trust Act, and that the use of the patents was not a subterfuge.

The acts alleged in the petition so far as the evidence in the case tends to establish them do not violate the provisions of the Sherman Act. The agreements in the case at bar are not within the Sherman Act. *United States* v. *Winslow*, 195 Fed. Rep. 578, 592. They were open upon the same terms to all who chose to take advantage of them. *United States* v. *Terminal Association*, 224 U. S. 383, 398, 410.

They were, moreover, based upon patents which created a true monopoly, a grant from the sovereign—the Constitution—so that to hold that this monopoly was violative of the Sherman Act would be judicial legislation and an attack upon the whole patent system. *Henry* v. *A. B. Dick Co.*, 224 U. S. 16, 27, 35.

The Sherman Act and the patent laws were passed under separate grants of constitutional power and do not affect each other. *Bement* v. *National Harrow Co.*, 186 U. S. 70, 91; *Rubber Tire Wheel Co.* v. *Milwaukee R. W. Co.*, 154 Fed. Rep. 358, 362.

The true construction of the Anti-trust Act, and one not in conflict with any of the decisions, is that it does not condemn a fair and reasonable attempt to avoid loss by means of trade agreements which are intended to prevent nothing but the cutting of rates below the reasonable expense of production and reasonable profit thereon; nor is the monopolization referred to simply the complete occupation of a certain field if that occupation may be fairly accomplished. *Fonotipia, Ltd.*, v. *Bradley*, 171 Fed. Rep. 951.

The legislative history of the act and its construction as declared in *Standard Oil Co.* v. *United States*, 221 U. S. 1, 58, show that it has no application to economic agreements to meet market demands. The agreements in the

case at bar are not within the Sherman Act, because their dominant purpose was to promote the trade of the parties, and there are in the agreements and in the acts under them none of the elements pointed out in the *Standard Oil Case* and the *Tobacco Case* as objectionable, such as enhancement of prices; limitation of output; deterioration of quality; or intimidation, coercion, or fraud.

On the contrary, in these agreements and acts under them, prices were not enhanced, there was no limitation of output, there was a great improvement in quality, and there was no intimidation, coercion or fraud.

For other cases construing the act see *United States* v. *Du Pont De Nemours* Co., 188 Fed. Rep. 127; *United States* v. *John Reardon & Sons*, 191 Fed. Rep. 454; *United States* v. *St. Louis Terminal Assn.*, 224 U. S. 383.

In the case at bar all manufacturers were offered, and any could secure, a similar license agreement, and it was to the pecuniary and selfish interest of the parties interested to grant licenses to as many as possible. See *Mogul S. S. Co.* v. *McGregor*, 23 Q. B. D. 598, A. C. [1892] 25.

For other cases holding trade agreements not to be illegal under the Sherman Act, see *Hopkins* v. *United States*, 171 U. S. 578, 592; *Anderson* v. *United States*, 171 U. S. 604; *Fonotipia, Ltd.*, v. *Bradley*, 171 Fed. Rep. 951, 959; *United States* v. *Knight Co.*, 156 U. S. 1; *Bigelow* v. *Calumet & Hecla Co.*, 167 Fed. Rep. 721; *Camors-McConnell Co.* v. *McConnell*, 140 Fed. Rep. 412, and 987; *Whitwell* v. *Continental Tobacco Co.*, 125 Fed. Rep. 454; *Prame* v. *Ferrell*, 166 Fed. Rep. 702; *Packet Co.* v. *Bay*, 200 U. S. 179; *Phillips* v. *Cement Works*, 125 Fed. Rep. 593; *S. C.*, certiorari denied, 192 U. S. 606.

In this case, however, the Sherman law has no application. *United States* v. *Winslow, supra; Fire E. C. Co.* v. *Halsted*, 195 Fed. Rep. 295.

For the cases in which it has been held that a violation of the Sherman Act is no defense in infringement suits,

see *Johns-Pratt Co.* v. *Sachs Co.*, 176 Fed. Rep. 738; *Otis Elevator Co.* v. *Geiger*, 107 Fed. Rep. 131; *National Folding Box Co.* v. *Robertson*, 99 Fed. Rep. 985; *Bonsack Machine Co.* v. *Smith*, 70 Fed. Rep. 383; *Strait* v. *National Harrow Co.*, 51 Fed. Rep. 819; *Brown Saddle Co.* v. *Troxel*, 90 Fed. Rep. 620; *Soda Fountain Co.* v. *Green*, 69 Fed. Rep. 333; *Edison El. Light Co.* v. *Sawyer-Man Co.*, 53 Fed. Rep. 592; *Columbia Wire Co.* v. *Freeman Wire Co.*, 71 Fed. Rep. 306.

The claims made by the Government have not been sustained and the authorities relied upon by it can be distinguished. The license agreements are entirely beneficial and have harmed no one.

The court below erred in not granting the motion of the defendants for an enlargement of time to take testimony and that the hearing of the case be postponed until the testimony of the defendants could be completed.

A motion was made at the hearing below for the enlargement of the time of the defendants to complete their testimony on the ground that they had been prevented, by the petitioner's action in instituting criminal proceedings, from properly presenting their defense.

In view of the warnings against the individual defendants testifying as witnesses, and of the necessity of standing trial upon these indictments the individual defendants were unwilling to voluntarily appear and testify, lest by so doing they should furnish the Government with some information which might be used against them upon the said trial.

No matter how innocent a man may believe himself to be, or may be advised as a matter of law that he is, it is perfectly proper for a man to refuse to put himself in a position where what he says may tend to incriminate him if by a reasonable delay, to be granted by a court of equity, he can equally well protect himself and his property at a somewhat later date without any harm to the public.

Mr. Robert B. Honeyman, with whom *Mr. A. Parker Smith* was on the brief, for the Colwell Lead Company, appellant.

Mr. Edwin P. Grosvenor, Special Assistant to the Attorney General, with whom *The Attorney General* was on the brief, for the United States:

This case presents the latest contrivance for evading the rules prescribed by the Sherman Act in the conduct of interstate commerce, and particularly "the rule of free competition among those engaged in such commerce." Mr. Justice Harlan in the *Northern Securities Case*, 193 U. S. 331. Since that act was passed in 1890 this court has had occasion to consider various forms of combinations and monopolization. The earliest form was that of an unincorporated association with a constitution and by-laws accomplishing unlawful restraints condemned in the *Addyston Pipe Case*, 175 U. S. 211; *Montague* v. *Lowry*, 193 U. S. 38; *Trans-Missouri Association Case*, 166 U. S. 290, and *Joint Traffic Association Case*, 171 U. S. 505. Destruction of competition between manufacturers through the adoption of a common selling agency given the form of a state corporation was held unlawful in the *Continental Wall Paper Case*, 212 U. S. 227. The holding company as a means of suppressing competition whether between railroads or between industrial companies received the same judgment in the *Northern Securities Case, supra*, and in the *Standard Oil Case*, 221 U. S. 1. In *Miles Medical Co.* v. *Park & Sons*, 220 U. S. 373, this court pronounced unlawful a scheme of so-called agency contracts under which a manufacturer attempted to establish uniform prices on all sales by wholesalers and retailers of proprietary medicines manufactured by him. In the case against the Tobacco Trust, it was held, 221 U. S. 106, that the American Tobacco Company and five other companies organized

under the laws of New Jersey were unlawful combinations, among other reasons because they had acquired monopolistic power with a wrongful purpose and by methods inconsistent with a natural and normal expansion of business. In *United States* v. *St. Louis Terminal Association*, 224 U. S. 383, it was decided that a terminal association of railroads is an illegal restraint so long as it does not act as the impartial agent of every line which, owing to geographic conditions, is under compulsion to use its instrumentalities.

The case at bar is an instance of an attempt to conceal an agreement fixing prices and interfering with competitors under the guise of a legitimate licensing arrangement for the use of patents. The appellants incorporated the unlawful restraints in so-called "license agreements," each corporation defendant entering into one of these "license agreements" with the same contracting party, to whom three patents had been transferred before the signing of the contracts.

In every case we must use the standard of reason for the purpose of determining whether or not an act or alleged restraint of commerce has brought about the harm from which the Sherman Anti-trust Act is intended to guard the people. *Standard Oil Case, supra.*

If the acts complained of have caused the wrongs which the statute forbade, resort to reason is not permissible to allow that to be done which the statute prohibits. It matters not what form the combination may take, or what garb or dress it may put on, for if it directly restrain commerce it falls within the operation of the statute. *Standard Oil Case*, p. 106; *Northern Securities Case*, 193 U. S. 197, 347.

The appellants adopted in this case a form of combination different from any heretofore considered by this court. But it is the form alone that is new. Behind the grinning mask of the "license agreement" is the common,

vulgar type of monopoly which many times has been condemned by this court, dangerous alike to "individual liberty and the public well-being." *American Tobacco Co. Case*, 221 U. S. 183.

Continental Wall Paper Co. v. *Voight*, 212 U. S. 227, and *Miles Medical Co.* v. *Park*, 220 U. S. 373, dispose of this case.

In the first case the element of combination is present which is absent in the second. In each case the contracts were devised with the object of controlling the resale prices of jobbers and of eliminating all competition between jobbers as to prices. The two cases supplement each other, one holding that manufacturers cannot combine through a selling agency and the other that a manufacturer cannot dictate the prices on all sales of his products by all dealers at wholesale and retail.

All combinations obstructing the free flow of interstate commerce or interfering with the citizen's right to engage in commerce or suppressing competition in commerce are unlawful. These propositions are past dispute.

The restraints complained of by the Government substantially and directly operate upon commerce in unpatented enameled ware and only indirectly relate to the use of the patented article or dredger.

It was competition in commerce in unpatented bathtubs which appellants destroyed, and upon persons engaged in commerce in that ware they imposed their unreasonable restraints.

While it is true that the property right to a patented machine may pass to a purchaser with no right of use, or with only the right to use in a specified way or at a specified place or for a specified purpose, nevertheless restraints so imposed must be legal and reasonable conditions attached to the use of the patented article. They cannot be restrictions inherently violative of some substantive law. *Henry* v. *Dick Co.*, 224 U. S. 1, 24, 26.

In the case at bar the restrictions were not reasonable and legal conditions attached to the use of the patented machine, for they restrained trade and promoted monopolization of commerce in articles not patented. Moreover, the restrictions were not attached to the use of the patented tool, but applied to acts subsequent to the use; that is, to what was done after the use of the tool embodying the invention. The restraints were laid upon the distribution of and commerce in ware in the making of which the tool was used.

In the *Dick Case, supra*, the restriction provided that in the use of the mimeograph the only paper used should be paper which had been supplied by the patentee. Therefore the condition became effective at the time of use of the patented article. There was no attempt to control the output of the mimeograph, or to fix the price at which the users of the mimeograph should sell the mimeographed copies.

Breach of the conditions in the Wayman licenses could occur only after the use of the patented Arrott dredger, for those conditions applied solely to acts performed after the use. Acts in interstate commerce subsequent to the use are not related to the use, and accordingly conditions attached to those subsequent acts do not qualify the use. Therefore it is clear that sales to non-licensed jobbers or sales at prices different from the established prices do not in any sense constitute a use of the invention in a "prohibited way," but are, in fact, violations of those terms of the contracts which apply to the disposition of non-patented articles.

It is immaterial whether or not the patented tool is essential in producing the enamel ware, for in any event no restriction laid upon the distribution of the ware in commerce can relate back so as to qualify even remotely the use of that tool during the manufacture of the ware.

The license agreement sustained by the Dick decision created no monopoly in unpatented things, for it left the whole world free to manufacture and sell paper and ink. It reserved to the patentee the sole right to supply specified unpatented articles to specified persons, but it did not prevent any other persons manufacturing and distributing those unpatented articles generally to all except to those who had bought the patented mimeograph. It gave to no one control either over the source of supply of the unpatented articles or over the demand for those articles, except in respect to the person who bought the patented mimeograph. As to him only was the market curtailed and the demand controlled.

On the other hand, in the case at bar the direct object of the appellants was to monopolize commerce in articles unpatented and of universal use. The combination directly affected and absolutely controlled every phase of that commerce. It not only dictated the prices on sales from the manufacturers to the jobbers and every term and condition applicable to those sales, but also regulated in the same detail the sales of the jobbers to the plumbers. Moreover, every restriction contained in the agreements has been cruelly and oppressively enforced and maintained.

The patentee who grants a license to make and use the patented machine has no control by virtue of his patent over the article made with the help of the patented machine. *Keplinger* v. *DeYoung*, 10 Wheat. 358; *Merrill* v. *Yeomans*, 94 U. S. 568.

No word or phrase in the Sherman Act reveals an intent to exempt the owners of patents from its sweeping provisions against monopolistic combinations. *United Shoe Machinery Company* v. *La Chappelle*, 99 N. E. Rep. 289.

The patent laws and the Sherman Law are not conflicting, but in their respective domains are mutually exclusive of each other.

The right conferred by the patent laws is not the right to make, use and vend the thing patented, for this right exists by virtue of the common law and independently of the patent statutes; this right to make, use and sell the patented devise is a natural right. The only right which the letters patent grant is the right to exclude all other persons from making, using or vending the thing patented without the permission of the patentee. *Bloomer* v. *McQuewan*, 14 How. 539, 548; *Patterson* v. *Kentucky*, 97 U. S. 501, 506.

The right to sell a patented article is subject to the police regulation of the State. *Patterson* v. *Kentucky*, 97 U. S. 501, 505; *Webber* v. *Virginia*, 103 U. S. 344, 347; *In re Brosnahan*, 18 Fed. Rep. 62, 165.

In the cases last cited the exercise of the police power of a State in prohibiting the sale of patented articles was held not to be in conflict with the patent laws of Congress. If the State may prohibit altogether the sale of patented articles because of injury resulting from such sale to its citizens, it follows that the State may prohibit the sale of patented articles pursuant to combinations in restraint of intrastate trade and commerce, for such combinations are equally harmful to the public. In the one case the State is prohibiting any sale, in the other case it is merely regulating the sale of the patented article in so far as it declares that no such sale shall be made under any unlawful combination monopolizing or restraining intrastate commerce. In either case the State is exercising its police power to protect its citizens; neither exercise of power conflicts with the patent laws. The reason is clear. The regulation of the State is being applied to natural rights and not to patent rights. The right to sell, a common-law right, is denied by the State in the one case and regulated in the other, the State acting in each case for the good of the public.

In passing the so-called anti-trust statutes Congress and a state legislative body act under different sources

of power, but in each case the exercise of the power arrives at the same result, namely, prohibition of restraints of trade and of monopolies. The effect of the state act and of the Sherman Act is the same; that is, the two acts relate to and operate upon the same subject-matter, although one is enacted under the police power of the State and the other under the authority of Congress to regulate interstate commerce. If the exercise of the police power of the State does not encroach upon the domain of the patent laws, it cannot in reason be argued that to include within the operation of the Sherman Act combinations restraining trade is to subtract from the monopoly of the patentee.

Whether appellants were entitled to further time for the taking of testimony was a matter resting in the discretion of the lower court. The Sherman Act provides four remedies: a criminal proceeding, a suit in equity, forfeiture of property, and an action in treble damages. The wisdom of the law and the effect of rigid enforcement are not matters for consideration by the court, but by other departments of the Government. *Armour Packing Co.* v. *United States*, 209 U. S. 56, 82.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Suit by the Government against appellants for a violation by them of the act of July 2, 1890, 26 Stat. 209, c. 647, commonly known as the Sherman Anti-trust Act.

A decree was entered in favor of the Government, from which appellants (designated herein as defendants) have prosecuted this appeal. 191 Fed. Rep. 172.

There are sixteen corporate and thirty-four individual defendants, the latter, with the exception of Edwin L. Wayman, being the officers, presidents or secretaries, of the companies.

The corporate defendants were alleged to be the manufacturers of enameled iron ware in various places in the United States, manufacturing 85% of such ware and engaged in interstate commerce in such ware throughout the United States and with foreign countries in competition with one another and with certain other manufacturers of such ware, and that in 1909, or early in 1910, they entered into and engaged in a combination and conspiracy to restrain such trade and commerce.

The defendants denied the charges against them, Wayman doing so in a separate answer. The Colwell Lead Company denied that it was engaged in interstate commerce.

A great deal of testimony was taken and the case quite elaborately argued, but in the view we take of it it is in comparatively narrow compass, depending upon the application of well-settled principles.

The corporate defendants are manufacturers of sanitary enameled iron ware, such as bath tubs, wash bowls, drinking fountains, sinks, closets, etc. The enameling consists in applying opaque white glass to iron utensils, first in the condition of a liquid and, second, in the form of a powder. The process consists in heating the utensil to a red heat and then sifting upon it the enameling powder. The powder is fused by the high temperature and forms on the utensil a hard, impenetrable, insoluble, smooth and glossy surface.

Prior to the invention of James W. Arrott, Jr., covered by letters-patent issued September 26, 1899, the enameling powder was applied by a sieve attached to a long handle which was held by the workman with one hand and the sieve made to vibrate by the workman striking the handle with his other hand, thereby sifting the powder over the surface of the iron ware. The implement was an imperfect one, not easily handled, and by its use the workmen were subjected to intense heat and physical strain. The

flow of the powder beside was not continuous; it was cast upon the metal in intermittent puffs, causing in many instances an unequal distribution of the powder and producing defective articles which either had to be thrown away or sold as "seconds." With Arrott's invention these evil results are lessened or disappear. The sieve is mechanically vibrated very rapidly, causing, instead of an intermittent flow of the powder as in the hand process, a practically continuous flow. Both hands of the workman may be used to guide and direct the sieve. The advantages of the instrument over the hand process are decided. It is more efficient and more economical. It makes a better article and in less time. There is no waste in defects or "seconds." The workman is relieved to some extent from "fierce heat conditions," to quote from the answers.

At the time of the contracts which are attacked by the Government the Standard Sanitary Manufacturing Company was the owner of the patent and manufacturer of 50% of the ware, and used in its production the patented device. Some of the other manufacturers were infringing and controversies existed. Some yielded to its validity, others contested it. It was sustained by the courts in several cases.

We have gone through this detail to exhibit the conditions, as asserted by defendants, which confronted them and induced their contracts. In further display of it we quote Wayman's answer as follows:

"For the reasons stated, the art was in a very unsatisfactory condition. No means had been discovered of accomplishing the result produced by the use of the Arrott invention without laying the user of such means open to a suit for infringement by the owner of the Arrott patent. The manufacturers using the process in use prior to Arrott's invention were unable to successfully compete with those using the Arrott invention, and moreover, produced a

disproportionate number of defective, unsightly and substantially unsaleable articles. The consumer was deceived and defrauded and the use of Sanitary Enameled Iron-Ware lessened and its reputation depreciated by defective articles being palmed off on the consumer as not defective."

On the situation thus asserted to exist the defendants build their defense, contending that Wayman saw its evils and conceived the way to correct them; and insist that the following facts are established by the evidence: Wayman was familiar, through his connection with another enameling company called the Seamless Steel Bath Tub Company, with the enamel ware trade and had become convinced of the advantages, indeed, necessity, of the use of the Arrott invention. He tried to secure it, but the Standard Company seemed unwilling at that time to confer its utility upon other companies, and pending the negotiations the Seamless Company failed and Wayman turned to other plans, one of which resulted in the contracts under review.

As early as 1908, impressed with the importance of the Arrott patent, he endeavored to have the Standard Company grant licenses to other companies in order to improve trade conditions, and to this end he tried to interest other gentlemen in the project. The Standard Company was unwilling to grant, and other manufacturers were equally disinclined to accept them. He then conceived the idea of a holding company, but this failed also, the Standard still being unyielding, stating by one of its officers that "his company was unwilling either to sell the Arrott patent or to enter into any arrangement which would lessen the advantage which it had by reason of the ownership of the Arrott patent." The plan was, therefore, abandoned.

In August, 1909 (we are still following the version of the testimony given by counsel for defendants), it was suggested to Wayman by a person connected with one

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In August, 1909 (we are still following the version of the testimony given by counsel for defendants), it was suggested to Wayman by a person connected with one

of the manufacturing companies that he (Wayman) apply for the position of secretary of the Association of Sanitary Enameled Ware Manufacturers which was about to be reorganized. The position, it was said, would give Wayman an excellent opportunity to continue his efforts to buy the Arrott patent and establish such relation with the manufacturers of enameled ware as would enable him to present in the most favorable manner his ideas in regard to the advantages of patent licenses under the Arrott patent. This association was a pure trade organization and not formed to control or regulate prices. Wayman applied for and obtained the position and commenced again negotiations for the Arrott patent and persisted, against the apparent reluctance of the Standard Company to give up the advantages of the patent. Finally he impressed the manager of the Standard factories with the greater advantages which would come to his company by the elimination of "seconds" and removing them as competitors of the better articles of the Standard, confining the competition to such articles of which the Standard produced 50%. The manager of the Standard and that company yielded to the representation of these advantages.

These advantages are dwelt on and made much of by counsel and they quote testimony to display their extent. "Seconds," as we have said, were articles of inferior or defective manufacture, and as their inferiority was not apparent they could be represented and sold as of standard quality. Such deception, it is asserted, was frequently practiced, and the articles turning out defective discredited enamel ware, gave it a bad reputation, and there was a growing difficulty to maintain or extend its sale. With "seconds" out of the way, it may be conceded, as it is contended, that only honest articles were available to plumbers, jobbers and builders.

The Standard Company fixed a price upon the Arrott patent and gave Wayman an option upon it. He, in the

following December, secured also an option from the J. L. Mott Iron Works upon a patent called the Dithridge, and from the L. Wolff Manufacturing Company an option upon the Lindsay patent. These patents were infringements of the Arrott device. Thus equipped, Wayman proceeded to engage the manufacturers in his proposition.

This summary of the situation counsel have supplemented by a declaration of motives. Counsel say that Wayman and the manufacturers were advised by able and competent lawyers of the legality of their plan. "Wayman's motive," it is asserted, "was to make money for himself, not as a manufacturer but as the owner of a patent, receiving royalties from those whom he licensed to use his patented invention." The form of his license, it is further asserted, followed the precedents and was based on that principle of the patent law which gives to the owner of an invention the power to grant to others its use or to withhold it, or to grant it upon such terms as he may choose to impose. Such being his motive and such being his right, he, it is contended, negotiated with and contracted with the manufacturers of enameled ware. And their motives also are attempted to be justified, though the necessity for doing so is disclaimed.

Wayman's right, it seems to be contended, is all sufficient, and that the manufacturers only paid the price that he could legally demand. As the demand was legal, it is argued, the payment of the price could not be illegal. But the Government asserts subterfuge, illegal purpose liveried in legal forms to give color of right to illegal practices.

The charge challenges consideration of the relation between that which the manufacturers engaged to do and the protection of the exclusive right attached to the invention. Upon such consideration how far the licenses transcend such right and violate the Sherman Law we can then determine. And we shall keep in mind and apply

the principle expressed in *Bement* v. *National Harrow Company*, 186 U. S. 70, 92, that the Sherman Law "clearly does not refer to that kind of a restraint of interstate commerce which may arise from reasonable and legal conditions imposed upon the assignee or licensee of a patent by the owner thereof, restricting the terms upon which the article may be used and the price to be demanded therefor. Such a construction of the act we have no doubt was never contemplated by its framers."

In our inquiry we shall accept *arguendo* the statement of defendants of their inducement and purpose. We say "*arguendo*" because the asserted inducement and purpose are denied by the Government, it contending, as we have seen, that the Arrott patent was but a pretense and that the agreements were put in the form of licenses of it to at once accomplish and palliate evasions of the law. The fact being in controversy, we place our consideration and decision on other elements. In other words, we will consider the case from the standpoint of defendants' view of the situation, with comments as we proceed as to what they did to meet it and how far what they did accorded with or transgressed the law.

The contention of the defendants then is that the Standard Company's position and power as owner of the patent, and Wayman's were identical. What it could have done, it is contended, he could do, and its relation to the trade and the relation of other manufacturers to the trade clearly demonstrate, it is further contended, that as that company could have made the contracts, Wayman could do so.

To support the contention defendants represent the Standard as the dominant (it produced 50% of the articles) and the only honest manufacturer pointing out to other manufacturers the worthlessness of their output, they not having the Arrott patent; also the dishonesty of their output, they putting out "seconds," the inferiority

of which was "discernable only by experts"—thereby defrauding the public, "discrediting the ware and demoralizing the market and business." To avert these evil results, it is represented that the Standard was willing to forego the advantages which its ownership of the Arrott patent gave it and confer them upon the other manufacturers. But upon terms. "First and foremost" it was to be agreed that no "seconds" should be marketed. In the second place, a standard price must be agreed to so that henceforth rivalry should be "in the quality of the ware turned out at a uniform price or in any other collateral inducement to the purchaser" that would not "affect the quality of the ware." Wayman's agency and office, it is represented, was that of "watching all parties and insuring their fidelity to the agreement by the payment of a royalty for the use of the invention." And this, it is said, is "all there is in substance or principle to the case at bar, except that Mr. Wayman, instead of the Standard Company, was the originator of the scheme and that he persuaded his co-defendants to enter into it."

But the scheme has other features and effects which counsel overlook or ignore. It is immediately open to the criticism that its parts have no natural or necessary relation. What relation has the fixing of a price of the ware to the production of "seconds"? If the articles were made perfect their price in compensation of them and by unfettered competition would adjust itself. To say otherwise would be in defiance of the examples of the trading and industrial world. Nor was a combination of manufacturers necessary to the perfection of manufacture and to rivalry in its quality. And it may be asked if such perfection and its protecting influence against deception and the ruinous depression of prices were so desirable and potent as it is contended that they were, why were they not extended to "baths," the most important of the articles in the trade? It is not an adequate answer to say that

there was a time guarantee of them even though it was given to all of them, as it was not. The justification of defendants is based not on the responsibility of manufacturers but on the integrity of the articles assured by the use of the Arrott device.

It is the foundation of defendants' argument that to make the use of that device universal was the prompting of Wayman's energies to unite the manufacturers and to remove the evils which beset the trade and which were "discrediting the ware and demoralizing the market and business." It was the representation of the advantage, we are told, of such results that broke down the resolution of the Standard Company not to share the use of the device with other manufacturers. But granting that there was provision or security against the production of "seconds" in all of the articles, it seems from what we have said above that all of the substantial good which is asserted to have been the object of the agreements could have been attained by a simple sale of the right to use the Arrott patent, conceding to it the dominant effect which is attributed to it. Nor is the justification of defendants made more adequate by the representation that "Wayman's motive was to make money for himself, not as a manufacturer but as the owner of the patent, receiving royalties from those whom he licensed to use his patented invention." Wayman testified to another motive. By fixing prices "he hoped," he said, "as one of the features of the license agreements, to enable the companies to abolish ruinous competition" and to get a "revenue for each of the companies to enable them to make a reasonable profit."

But motives and inducements may not be easily estimated, and we will pass to a consideration of the agreements. On March 30, 1910, the Manufacturers' Association passed a resolution and a committee of five was constituted, to be known as the price and schedule com-

mittee, to which the license agreements and resale agreements should be referred. This committee was to interview the various manufacturers and obtain their consent to the agreements which were to become effective "when the consent of 83% of the production" was had. The signatory manufacturers agreed to "give their prompt coöperation to the matter in question."

At the same time the following resolution was passed:

"Whereas, a proposition is pending for a license agreement and a resale price for the benefit of the jobbing trade, and

"Whereas, long-term contracts are a menace to said proposition,

"We, the undersigned, manufacturers of enameled ware, hereby agree to take no orders for delivery beyond May 31, 1910.

"This agreement is not binding upon the signers unless all members of the Enameled Ware Manufacturers' Association are parties thereto and append their signatures.

"The within is agreed to."

At the same meeting a memorandum of agreement was proposed which was to be executed with Wayman as licensor of various patents covering pneumatic dredgers. The agreement covered selling schedules of the ware and provided for the royalties to be paid; the selling price to the jobbers to be established by the licensor through a committee appointed by the various manufacturers. It provided penalties for the violation of the price regulations, and preferential discounts (discounts allowed to certain manufacturers) from the selling prices. Such discounts were to be allowed on sales to jobbers only.

Such details as might "be necessary for the perfection of the arrangement" were reserved for the next meeting of manufacturers. After this meeting a circular letter was sent by Wayman to all manufacturers apprising them of what had transpired, the attention that had been

given the subject and informing them that "the final license agreement papers" would be executed at the next meeting, to be held in May.

The license agreement was subsequently executed. It granted to the licensee the right to use in the manufacture of enameled ware the Arrott patent, also a patent to E. Dithridge for a pneumatic sieve and a patent to William Lindsay for an "Enameling powder distributor." It released the claims for past infringement so long as the licensees operated under the license. It fixed royalties of $5.00 per day for each furnace, subject to a diminution of like amount for furnaces shut down for more than six consecutive working days. It fixed preferential discounts from the regular selling prices, confining them only to sales by the manufacturers to jobbers. And it was provided that no goods manufactured under the license should be sold unless they bore a registered label (except where otherwise specified) owned by the licensee and in addition thereto a license tag or label approved by the licensor placed in a visible position thereon.

The provision for prices was as follows:

"The Licensor agrees that he will employ a commission of six (6) persons, of which he is to be one and to act as chairman thereof, five of whom shall be designated by a majority of the parties holding licenses similar to this license, which commissions shall have supervision of all the relations and transactions between the parties hereto under this agreement, but it is understood that where a member of said commission, or his company, shall be directly interested in any question of a violation of the license to be decided by the said commission, said member shall be disqualified and a temporary member shall be appointed in his place by the remaining members of the commission.

"All terms and conditions relative to prices and discounts now established by the Licensor and set forth in

the annexed schedules and made a part hereof, shall remain in force and effect until other terms, conditions and preferential discounts are substituted therefor by the Licensor, which substitution can only be made by him with the approval of a majority of the members of the commission, hereinbefore prescribed. Notice of such changes and substitutions shall be given from time to time in writing by the Licensor to the Licensees. The Licensee covenants to adhere to and maintain such terms, conditions, regulations, prices and preferential discounts as may be established by the Licensor, from time to time, *and the Licensee further agrees to sell no 'seconds' or 'Bs' covered by Schedules* 4, 4½, 5 *and* 6." (Italics ours.)

The restrictions as to prices at which the goods were to be sold did not apply to those sold and exported to foreign countries. Such sales were required, however, to be proved to the licensor.

There was a provision for the return of 80% of the royalties paid if the agreement should be complied with. These royalties, called in the agreement "Royalty Rebates," were forfeited if the provisions of the agreement should be violated in any particular.

The foregoing constitute the essential provisions of the manufacturers' agreements and it will be observed what little space is given to "seconds," though it is asserted in the argument, as we have seen, that to get rid of the evils of their production and sale was the chief impulse to the agreements. The covenant as to "seconds" was expressed by the words which we have italicized in the provision relating to prices and discounts quoted above. The schedules referred to are found in the paragraph providing for preferential discounts and cover all articles but baths, these being described in schedules 1, 2 and 3.

There was also a jobber's license agreement that bore at the top the note that it "must be executed by the purchaser in order to purchase licensed sanitary enameled

ware." It conveyed to the jobber the right to buy and sell such ware, provided for certain discounts and details as to shipments and deliveries, and that the sales were to be made "by the purchasers at prices to be established and prevailing in the various zones into which the goods were shipped, regardless of the point of purchase." There was a provision for the payment of the purchase price at certain rebate periods if the agreement should be complied with. The resale prices as established from time to time were required to be maintained by all jobbers and dealers, and sales could not be made from one jobber to another for any better prices than "established by the sheets," and the purchaser agreed to "observe and strictly maintain . . . the selling prices as they are set forth in the schedules and observe and adhere to the rules and regulations as embodied in the price sheets" or embodied in price sheets which might be issued by or under the authority of the licensor. Articles might be added to or removed from the schedules at any time. The purchaser also agreed during the life of the contract not to purchase, sell, advertise or solicit orders for, or in any way handle or deal in, sanitary enameled iron ware of any manufacturer not licensed under the letters-patent enumerated in the agreement, except with the express written permission of the licensor. A breach of any of the conditions subjected the contract and all unfilled orders to cancellation, the forfeiture of rebates and the power to obtain the ware manufactured under the letters-patent from any of the licensed manufacturers. The purchaser further agreed not to sell any goods on hand manufactured in accordance with the patents, irrespective of by whom manufactured, except in accordance with the prices, conditions and regulations of sale established by the licensor.

The price list contained a notice to the jobbers' salesmen that the agreements executed by their companies

required them to resell the various licensed products at no better prices, terms, or other regulations than therein established. And further, as changes, additions and eliminations occurred, new sheets would be issued promptly.

These are the main outlines of the agreements, and, as emphasizing them, Wayman directed the manufacturers at the time they sent out the jobbers' agreements to also send with them a letter containing the following: "It is necessary for you [the jobbers] to execute these contracts before we [the manufacturers] can sell you licensed sanitary enameled ware." This provision was enforced, as indicated by letters in the record. It was also the condition expressed by Wayman in his correspondence with other manufacturers whom he tried to induce to accept licenses and become parties to the agreements. In a letter to a jobber Wayman expressed the hope that the jobber could see his way clear to execute the agreement, as it covered "a matter entirely for the jobbers' benefit." He further stated, "The Cedar Rapids Pump Company of your city have executed the agreement and I hope you will coöperate immediately with your local competitors, which will be much more advantageous than a continuous cut market."

In this statement certain things are prominent. Before the agreements the manufacturers of enameled ware were independent and competitive. By the agreements they were combined, subjected themselves to certain rules and regulations, among others not to sell their product to the jobbers except at a price fixed not by trade and competitive conditions but by the decision of the committee of six of their number, and zones of sales were created. And the jobbers were brought into the combination and made its subjection complete and its purpose successful. Unless they entered the combination they could obtain no enameled ware from any manufacturer who was in the combination, and the condition of entry

was not to resell to plumbers except at the prices determined by the manufacturers. The trade was, therefore, practically controlled from producer to consumer and the potency of the scheme was established by the coöperation of 85% of the manufacturers and their fidelity to it was secured not only by trade advantages but by what was practically a pecuniary penalty, not inaptly termed in the argument, "cash bail." The royalty for each furnace was $5.00, 80% of which was to be returned if the agreement was faithfully observed; it was to be "forfeited as a penalty" if the agreement was violated. And for faithful observance of their engagements the jobbers, too, were entitled to rebates from their purchases. It is testified that 90% of the jobbers in number and more than 90% in purchasing power joined the combination.

The agreements clearly, therefore, transcended what was necessary to protect the use of the patent or the monopoly which the law conferred upon it. They passed to the purpose and accomplished a restraint of trade condemned by the Sherman law. It had, therefore, a purpose and accomplished a result not shown in the *Bement Case*. There was a contention in that case that the contract of the National Harrow Company with Bement & Sons was part of a contract and combination with many other companies and constituted a violation of the Sherman law, but the fact was not established and the case was treated as one between the particular parties, the one granting and the other receiving a right to use a patented article with conditions suitable to protect such use and secure its benefits. And there is nothing in *Henry* v. *A. B. Dick Co.*, 224 U. S. 1, which contravenes the views herein expressed.

The agreements in the case at bar combined the manufacturers and jobbers of enameled ware very much to the same purpose and results as the association of manu-

facturers and dealers in tiles combined them in *Montague & Co.* v. *Lowry*, 193 U. S. 38, which combination was condemned by this court as offending the Sherman law. The added element of the patent in the case at bar cannot confer immunity from a like condemnation, for the reasons we have stated. And this we say without entering into the consideration of the distinction of rights for which the Government contends between a patented article and a patented tool used in the manufacture of an unpatented article. Rights conferred by patents are indeed very definite and extensive, but they do not give any more than other rights an universal license against positive prohibitions. The Sherman law is a limitation of rights, rights which may be pushed to evil consequences and therefore restrained.

This court has had occasion in a number of cases to declare its principle. Two of those cases we have cited. The others it is not necessary to review or to quote from except to say that in the very latest of them the comprehensive and thorough character of the law is demonstrated and its sufficiency to prevent evasions of its policy "by resort to any disguise or subterfuge of form," or the escape of its prohibitions "by any indirection." *United States* v. *American Tobacco Co.*, 221 U. S. 106, 181. Nor can they be evaded by good motives. The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intention of parties, and it may be, of some good results. *United States* v. *Trans-Missouri Freight Asso.*, 166 U. S. 290; *Armour Packing Co.* v. *United States*, 209 U. S. 56, 62.

The Colwell Lead Company asserts the legality of the license agreements as the other defendants do, and, besides, urges that it was not engaged in interstate commerce but that it only sold to plumbers and that none of the price restrictions was applicable to it, nor was it

at any time in any relations whatsoever with the other defendants. It asserts that it was itself a jobber and therefore had no occasion to deal with jobbers and that it was not present nor represented at any of the meetings preceding the license agreements.

It does appear, however, that the company was a member of the association of manufacturers, an association which, we have seen, passed the first resolution in regard to the license agreement, and the president of the company when addressed on the subject of the agreement expressed an appreciation of it provided all manufacturers should "sign up." He, however, reserved final judgment until he could go over the matter in detail with Wayman, who had addressed him, and declared that he would "be greatly influenced by what other manufacturers do."

There is a letter in the record, about which, however, there is some dispute, purporting to have been written by the president of the company to Wayman, in which the latter's interpretation of a previous letter was said to be "entirely correct," and which contained the following: "We will not require any preferentials below the lowest price made by the Standard Sanitary Manufacturing Co." There can be little doubt of the genuineness of the letter, and it is certain that the company assented on the twenty-fifth of May, 1910. Its license, however, was modified in order that it might meet local competition in New York, its business being, it is contended, mostly local.

It appears from the testimony that the company was a manufacturer and a jobber, manufacturing about one-half of what it sold. As a jobber it bought goods from other manufacturers but it denies there was an agreement as to prices with such manufacturers.

The testimony as to the state or interstate character of its business is that it manufactures at Elizabeth, N. J.,

and buys also from other manufacturers and jobbers. It ships from there to its warehouses in New York, Worcester, Mass., and Brooklyn. The trade of its Worcester branch covers about two hundred miles around Worcester, its efforts being to localize its business. It is doubtful, it is testified, if the trade goes beyond Massachusetts, the trade there being circumscribed. Sales in Connecticut are made through the New York office from the ware-rooms.

It is manifest that the Colwell Company was a party to the combination and was also engaged in interstate commerce. The fact that its trade was less general than that of the other manufacturers and jobbers does not take from it the character of an interstate trader. The fact that it was restricted in less degree than the other jobbers, given a certain freedom of competition to meet local conditions in New York, diminishes only the degree of culpability but does not entirely remove it. Indeed it may be said that such freedom does not even diminish culpability. It is a concession, which may be made a means of crushing competition where it is most formidable.

Error is assigned on the action of the Circuit Court in not granting a motion made by defendants for an enlargement of time to take testimony on the ground that they had been prevented, by the action of the Government in instituting criminal proceedings, from properly presenting their defense.

The question arose upon the action of witnesses who were subpœnaed and called by the Colwell Lead Company, they being officers of some of the other manufacturers. The Government apprehending and as it now contends, that the witnesses were called to give them immunity from a criminal prosecution which was then pending in Michigan, notified them that if they testified they would do so at their peril, as immunity could only be claimed by

witnesses for the Government. The witnesses thereupon, upon the advice of counsel, refused to testify, leaving, as it is contended, the Colwell Company particularly, and the other defendants as well, without the evidence such witnesses could have given and which, it is said, they did give subsequently in the criminal trial.

Whether the testimony, if given, would have conferred immunity we are not called upon to determine. The only question is as to the extent of the court's discretion in such circumstances. The Sherman Act provides for a criminal proceeding to punish violations and suits in equity to restrain such violations, and the suits may be brought simultaneously or successively. The order of their bringing must depend upon the Government; the dependence of their trials cannot be fixed by a hard and fast rule or made imperatively to turn upon the character of the suit. Circumstances may determine and are for the consideration of the court. An imperative rule that the civil suit must await the trial of the criminal action might result in injustice or take from the statute a great deal of its power. Besides a suit by the Government there may be an action for damages by a "person injured by reason of anything forbidden by the Act." Must it also wait? Indeed, the reasons urged for the rule, if logically extended, would compel the postponement of the enforcement of the civil remedies until the exhaustion of criminal prosecutions or their expiration by lapse of time. Until either event occurs the danger of incrimination cannot be said to have passed. It is manifest, therefore, that the most favorable view which can be taken of the rights of defendants in such situation is that they depend upon the discretion of the court in the particular case. We find no abuse of such discretion in the case at bar.

Decree affirmed